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June 30, 1998

Asst. Atty. General
Env. and Nat. Res. Division
U.S. Dept. of Justice
950 Pennsylvania Ave. NW
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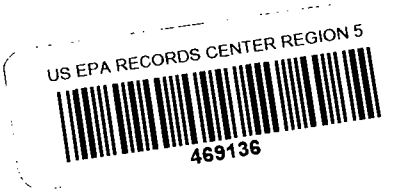
Washington D.C. 20530

VIA FEDERAL EXPRESS



Attn.: Lois J. Schiffer

RE: Comments of Cooper Ind. and Corning, Inc.
United States v. Decker Mfg. Corp., Civil Action No. 1:98-CV-404
Dept. of Justice Ref. No. 90-11-2-1109/1

Dear Ms. Schiffer:

Cooper Industries ("Cooper") and Corning, Incorporated ("Corning") oppose entry of the Consent Decree (the "Consent Decree" or "Decree") entered into on May 14, 1998, between the United States Environmental Protection Agency ("EPA"), the Department of Justice ("DOJ") and Decker Manufacturing Corporation ("Decker"). The Consent Decree was lodged with the United States District Court for the Western District of Michigan on May 14, 1998 (Case No. 1:98-CV-404), and purports, among other things, to relieve Decker of liability for certain penalties and response costs incurred by the United States at the Albion-Sheridan Township Landfill Superfund Site (the "Landfill"). Pursuant to the terms of the Decree and DOJ regulations, a notice of the proposed Consent Decree was published in the *Federal Register*. 63 *Fed. Reg.* 29752 (June 1, 1998). This notice invited comments concerning the proposed Decree during a thirty day comment period beginning June 1.

There is no rational basis for the proposed Consent Decree. The Decree is not reasonable, fair, or consistent with the purposes of CERCLA, as required by law. *See Kelley v. Thomas Solvent,* 717 F. Supp. 507 (1989). In particular, it is premature given the paucity of information concerning the relative responsibility of the potentially responsible parties ("PRPs") associated with the Landfill. As the only parties complying with the EPA's order to respond to contamination at the Landfill, Cooper and Corning already bear the brunt of Decker's unreasonable refusals to participate in cleanup activities to date. Entry of the proposed Consent

Decree at this early stage could unjustly compound this prejudice to Cooper and Corning by eliminating certain of their contribution claims against Decker. It is also unnecessary as previous litigation commenced by the United States will completely resolve the subset of issues covered by the Consent Decree. Moreover, the Consent Decree in effect rewards Decker for refusing to participate in the cleanup of the Landfill and discourages responsible corporate citizens like Cooper and Corning from cleaning up such sites in the future.

Background

On October 11, 1995, the EPA issued a Unilateral Administrative Order ("UAO") under the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. § 9601 *et seq.* ("CERCLA"), to Decker, the City of Albion, Cooper and Corning. Attachment A. The UAO, effective December 11, 1995, directed the recipients to design the remedy for the Landfill and to implement the design by performing the remedy. According to the EPA, failure to comply with the UAO could result in civil penalties of up to $25,000 per day and punitive damages of up to three times the amount of any response costs incurred by EPA. Attachment A, p. 35. Cooper and Corning are currently implementing the UAO. While Decker committed to implement the UAO, it has not.

Any attempts by Decker to participate in implementing the UAO thus far have been illusory. Cooper and Corning attempted to get Decker to share the financial burden of implementing the UAO. Discussions spanning a period of months resulted in Decker offering to pay an absurdly small amount, less than 5%, of costs incurred complying with the UAO (the Record of Decision estimated the cleanup would cost four million dollars), leaving Cooper and Corning to pay almost all costs. Such an offer is disingenuous at best given the strict and potentially joint, and several liability faced by the parties under CERCLA and the lack of any objective basis to differentiate each party's role in the Landfill's history. Cooper and Corning understandably did not accept the offer.

In the meantime, Cooper and Corning have hired a consultant as the project coordinator, have undertaken all necessary design work, and have begun implementing the design by performing an extensive removal of drums. In contrast, Decker, operating through a newly created subsidiary, very recently has merely purchased property adjacent to the Landfill and offers this as evidence of compliance with the UAO. Cooper and Corning need access to the Landfill through this adjacent property to carry out the UAO. Contrary to appearances,

Decker's actions have not furthered UAO implementation.[1] Decker has unreasonably conditioned access to the property on, among other things, Cooper and Corning's acknowledgment that Decker has incurred "response costs" consistent with the law. This is an integral legal element of Decker's current CERCLA claims against Cooper and Corning that should not be ransomed for hostage property. Attachment B, paragraph 8. In sum, Decker has not complied with the UAO, and, indeed, has hindered the effort.

Against this backdrop, the DOJ has filed two suits. First, on December 11, 1997, the DOJ filed suit (1:97-CV-1037) against the City of Albion under CERCLA to recover penalties, as well as past and future response costs incurred by the United States at the Landfill ("*U.S. v. Albion*"). This suit now encompasses all of the issues at the site. Albion predictably sought to add others and through third-party complaints, cross-claims and counter-claims, Cooper, Corning and Decker have now been added to the suit as third-party defendants. Each party denies liability and, significantly, seeks contribution for response costs under CERCLA § 113 from every other party. Second, on May 14, 1998, the DOJ filed the current action (1:98-CV-404) against Decker to seek entry of the Consent Decree ("*U.S. v. Decker*"). Instead of amending its Complaint in *U.S. v. Albion*, the United States evidently chose to file this duplicate action without moving to consolidate the cases in an effort to exclude Cooper and Corning from participating in the court's consideration of the Decree.

The Consent Decree states that it is a bar to any action for contribution by *any other party* for "matters addressed" in the Decree. Attachment C, p. 14. "Matters addressed" are defined as past response costs. Attachment C, p. 14. "Past response costs," in turn, are defined as:

> all costs, including but not limited to direct and indirect costs, that EPA or DOJ on behalf of EPA has paid at or in connection with the Site through the date of lodging of this Consent Decree, and all Interest on all such costs.

Attachment C, p. 6.

[1] As an initial matter, the purchase does nothing to further Decker's compliance with the UAO because the property was purchased by a Decker subsidiary--not Decker. Furthermore, Cooper and Corning are unaware of any authorization for Decker's subsidiary to make such a purchase, and as site coordinators under the UAO have never been informed of any such authorization despite repeated requests.

Therefore, the Decree purports to bar Cooper and Corning from recovering from Decker any of the government's "past response costs."[2] In *U.S. v. Albion*, Cooper and Corning find themselves potentially jointly and severally liable for these costs. If the Decree is entered, Cooper and Corning could be saddled with disproportionate liability without redress against Decker. This 'penalty' is especially egregious given that Cooper and Corning are already burdened with paying Decker's and Albion's shares of carrying out the UAO. Furthermore, aside from such "contribution protection," the United States also covenants not to sue Decker for past response costs and forgives claims for penalties for non-compliance with the UAO. For these protections and privileges, Decker is to pay only $250,000. If the City of Albion is successful in its defense, Cooper and Corning could be liable for the balance of past costs, which they understand to be in the range of an additional $1,000,000. The Consent Decree in essence punishes Cooper and Corning for carrying out the UAO and rewards Decker for laying in the weeds and refusing to bear its share of the costs. After nearly eighteen years of CERCLA implementation it is incomprehensible that EPA and DOJ could be this insensitive to the consequences of such a settlement.

Legal Standard

To warrant judicial approval, the Consent Decree must be 1) fair, 2) reasonable, and 3) consistent with the purposes of CERCLA. *Kelley v. Wagner,* 930 F. Supp. 293, 297 (1996); *Thomas Solvent,* 717 F. Supp. at 516. The Court "must eschew any rubber stamp approval" of the Decree, *Wagner,* 930 F. Supp. at 297, and, instead, make a "thorough and penetrating" independent review. *United States v. Akzo,* 949 F.2d 1409, 1426 (1991). The Consent Decree should not be entered if it is "arbitrary, capricious, and devoid of a rational basis." *Wagner*, 930 F. Supp. at 298. As part of its review, the Court must address the legal effect that the definition of "matters addressed" will have on non-settlors. *Id.* at 297.

[2] It is Cooper and Corning's interpretation of the Consent Decree that it does not bar Cooper and Corning from recovering response costs incurred directly by them, which are likely to total millions of dollars. If this is not the DOJ's understanding, Cooper and Corning ask that DOJ set forth its understanding and reasoning, and give Cooper and Corning an additional period to comment.

Comments

1. The Consent Decree is Devoid of a Rational Basis.

At this early stage of litigation, virtually no information exists concerning the parties' allocable share of liability. Therefore, the United States could not have had a sound foundation on which to base the allocation contained in the Consent Decree. The only basis for the Consent Decree set forth in the Decree itself is that "[it] has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest." Attachment C, p. 4. These conclusory remarks do not in themselves provide a rational basis for the Decree.

First, in part because the Landfill kept no records, too little is known at this time to form a basis for partitioning liability. Discovery in the litigation is only just beginning. Cooper and Corning are left to wonder, then, on what information such an important calculation of liability was made. In this respect, this case is unlike *Thomas Solvent.* There the court denied the non-settlor's requests to delay entry of a decree to allow for more discovery. The court noted, though, that the United States had "taken depositions of over 70 witnesses and filed numerous substantive and discovery motions." *Thomas Solvent,* 717 F. Supp. at 511. *See also U.S. v. BASF Corp.,* 990 F. Supp. 907 (1998)(noting that the CERCLA consent decree was arrived at only after "extensive research" that included, among other things, documentary evidence from several hundred sources). Here, in contrast, only one deposition has been taken in the case between the parties thus far. Moreover, Cooper and Corning are unaware of any estimate compiled by EPA of the amount of waste contributed by any party. Indeed, it is far too early in the discovery stage of the action between the parties to make such an estimate.

Second, there is no way that this Consent Decree is going to have the result of avoiding prolonged or complicated litigation. The *U.S. v. Albion* case, which proceeded this one, now encompasses all of the claims associated with the site and will continue regardless of whether the Consent Decree is entered or not. Indeed, entry of the Consent Decree is actually more likely to add complication to the litigation as it inappropriately allocates partial responsibility for past response costs at the site. This is an issue that is likely to be contested in the litigation and concerning which no facts currently exist upon which to base judgment at all.

Third, it is also questionable whether the DOJ used the proper baseline information to negotiate the Decree. The amount of past response costs is not disclosed in the

Decree and existing estimates of such costs are inconsistent.[3] Therefore, Cooper and Corning, as well as the court, have no way to determine what portion of past response costs Decker is paying. For instance, is Decker paying one-third or one-sixth of past response costs? With so few parties involved at this early stage of the litigation, the difference is substantial. In addition, have additional costs been incurred between the time the United States agreed to accept $250,000 and the time the Decree was lodged? In the end, unless the United States had an accurate tally of response costs during negotiations with Decker, the United States has failed to base its decision "on a consideration of the relevant factors." *Akzo,* 949 F.2d at 1427 (quoting *Citizens to Preserve Overton Park v. Volpe,* 401 U.S. 402, 416 (1971)). Cooper and Corning request the United States to disclose the amount of past response costs used in its negotiations with Decker, as well as the total as of the date of lodging the Decree, if inconsistent. An additional period of time should then be granted to provide Cooper, Corning and other interested parties with an opportunity to evaluate the Decree in light of such information.

In sum, Cooper and Corning believe that the Consent Decree is premature and there is no rational basis to support it. The Consent Decree should be rejected. In the alternative, Cooper and Corning request that entry of the Consent Decree be delayed so that the parties may develop evidence and information in the action just underway, and then evaluate the Decree in light of the new information.

2. The Consent Decree is Not Fair and is Not Reasonable.

With the intent of mitigating the "harshness of the joint and several liability rule" under CERCLA, Congress amended CERCLA in 1986 to clarify and confirm the right of a party to seek contribution from other potentially responsible parties. *Wagner,* 930 F. Supp. at 299. It is appropriate, then, to scrutinize the contribution protection granted to Decker.

First, for a payment of $250,000, Decker could insulate itself from suit for past response costs that Cooper and Corning believe to be at least $1,000,000. Only four parties have been clearly identified as viable potentially responsible parties. Whether one, two, three

[3] The Complaint in *U.S. v. Decker* states that unreimbursed response costs are "in excess of $900,000" as of January 31, 1997. Attachment D, paragraph 23. The United States' Complaint in *U.S. v. Albion*, on the other hand, pegs response costs for the same period at "in excess of $750,000." Attachment E, paragraph 23. A document produced by Decker shows EPA response cost for a period ending just one month later to be $1,285,361.48. Attachment F. Not only are these sums inconsistent, they fail to consider sums accumulated between February 1997 and the date of the lodging of the Consent Decree.

or all four of these parties is liable is not known,[4] much less the respective extent of such liability. Given these questions, Decker could be paying *far less* than its fair share at the cost of the other parties. Therefore, Cooper and Corning believe that the amount to be paid by Decker is too low. It is certainly unfair and unreasonable to allow the Decree to be entered at this early stage of the process given the lack of information available to evaluate fully the proposed settlement amount.

Second, the United States' waiver of certain penalties against Decker for failing to comply with the UAO is patently unfair to Cooper and Corning. Cooper and Corning undertook implementation of the UAO in large part to avoid the possibility of $25,000 a day penalties. Instead of rewarding Cooper and Corning for their compliance, however, the United States has, through the Consent Decree, rewarded Decker for its evasiveness. To the extent that an argument could be made that Decker has complied with the UAO by having its subsidiary purchase the adjacent property (which Cooper and Corning specifically do not concede) that purchase was consummated only very recently. Decker could *not* have been in compliance until then. While the United States certainly has enforcement discretion, it is being inappropriately exercised here.

Third, the United States has compounded this unjust result by not obtaining an admission from Decker that it is liable for future response costs, as it often does in consent decrees. *See e.g., Thomas Solvent,* 717 F. Supp. at 513. Consequently, not only must Cooper and Corning face the possibility of paying all future costs at the Landfill, they must also bear the substantial expense and risk of recovering these future costs from Decker in court. Likewise, the United States will have to seek recovery of its future costs from Decker.

Finally, the fact that Cooper, Corning and the United States (and other PRPs for that matter) must seek future costs from Decker negates one of the United States' purported reasons for entering into the Decree, namely that the settlement will "avoid prolonged and complicated litigation between the Parties." Attachment C, p. 4. To the contrary, because Decker's liability for future costs has been left open, Cooper, Corning and the other parties will be forced to pursue the issue at length in *U.S. v. Albion.* The question of apportionment of liability, then, remains squarely before the court.

[4] Ironically, of the group, Decker's liability is the best established. For instance, in the one deposition taken thus far, Decker's President testified that Decker sent gondola's holding waste cutting oil sediment containing low carbon steel metal shavings to the Landfill for disposal. These metal shavings contained, among other things, manganese and phosphorous, attachment G, which are listed hazardous substances. *See* 40 C.F.R. 302.4.

3. The Consent Decree is Not Consistent with the Purpose of CERCLA.

Finally, Cooper and Corning believe that the proposed Consent Decree is not consistent with CERCLA's goals. The purpose of CERCLA is to "ensure prompt effective remedial action while placing the financial burden of the cleanup on" potentially responsible parties. *Akzo,* 949 F.2d at 1439. In this case, however, the United States has rewarded a party that has refused to participate in the cleanup mandated by the UAO. *Cf. BASF Corp.,* 990 F. Supp. at 907 (settlors obligated by decree to complete some of the work); *Akzo,* 949 F.2d at 1416 (settlors to engage in remedial work); *Thomas Solvent,* 717 F. Supp. at 507 (settlor agrees to pay for portion of future work). This Consent Decree, then, encourages parties to "lay in the weeds" while others do the work. Furthermore, as discussed above, while the Decree does require Decker to pay $250,000, the bulk of the financial burden and risk will be on Cooper and Corning who are implementing the future cleanup. Tellingly, Cooper and Corning are not aware of any case in which a recalcitrant party was rewarded with a Consent Decree while other parties, left out of settlement discussions, implemented the remedy.

Conclusion

In the end, there is no rational basis for entering this proposed Consent Decree at this early stage of litigation other than to reward Decker for its recalcitrance. For the reasons discussed above, the Decree is not reasonable, fair, or consistent with the purposes of CERCLA, as required by law. Cooper and Corning request that the United States withdraw its approval.

Very truly yours,

Eugene E. Smary

attach.
c w/attach.: Cooper Industries, Inc.
Corning, Inc.
Decker Manufacturing Corporation
City of Albion
Francis J. Biros, **VIA FACSIMILE (w/o attach.)**
blue w/attach.: EES, MGM, DKD
320755v2

A

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region V

In The Matter Of:	)	
	)	
Albion-Sheridan Township Landfill	)	
	)	
CITY OF ALBION, CORNING GLASS, INC. DECKER MANUFACTURING, INC., COOPER INDUSTRIES, INC.,	)	
	)	
	)	
	)	U.S. EPA Docket No.____
Proceeding Under Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. § 9606(a))	)	V-W-96-C-316

ADMINISTRATIVE ORDER
FOR REMEDIAL DESIGN AND REMEDIAL ACTION

I. INTRODUCTION AND JURISDICTION

1. This Order directs Respondents to perform a remedial design for the remedy described in the Record of Decision for the Albion-Sheridan Township Landfill Site (the "Site" or the "Facility"), dated March 28, 1995, and to implement the design by performing a remedial action. This Order is issued to Respondents by the United States Environmental Protection Agency ("U.S. EPA") under the authority vested in the President of the United States by § 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601 et seq, as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986) ("CERCLA"), 42 U.S.C. 40 C.F.R. § 106(a). This authority was delegated to the Administrator of U.S. EPA on January 23, 1987, by Executive Order 12580 (52 Fed. Reg. 2926), and was further delegated to the Regional Administrator on September 13, 1987 by U.S. EPA Delegation No. 14-14 and 14-14A, and to the

Director, Waste Management Division, Region V, by delegation 14-14B.

II. PARTIES BOUND

2. This Order shall apply to and be binding upon each Respondent identified in paragraph 7 and its successors and assigns. Each Respondent is jointly and severally responsible for carrying out all activities required by this Order. Failure of one or more Respondents to comply with all or any part of this Order shall not in any way excuse or justify noncompliance by any other Respondents. No change in the ownership, corporate status, or other control of any Respondent shall alter the responsibilities of such Respondent or any other Respondent under this Order.

3. Each Respondent shall provide a copy of this Order to any prospective owners or successors before a controlling interest in Respondent's assets, property rights, or stock are transferred to the prospective owner or successor. Respondents shall provide a copy of this Order to each contractor, subcontractor, laboratory, or consultant retained to perform any work under this Order, within five days after the effective date of this Order or on the date such services are retained, whichever is later. Respondents shall also provide a copy of this Order to any person acting on behalf of Respondents with respect to the Site or the work and shall ensure that all contracts and subcontracts entered into hereunder require performance under the contract to be in conformity with the terms of this order and the work required by this Order. With regard to the activities undertaken pursuant to this Order, each contractor and subcontractor shall be deemed to be related by contract to the Respondents within the meaning of § 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3). Notwithstanding the terms of any contract, each Respondent is responsible for compliance with this Order and for ensuring that its contractors, subcontractors and agents perform all work in accordance with this Order.

4. Not later than thirty (30) days prior to any transfer of any interest in any real property included within the Site, Respondents shall submit a true and correct copy of the transfer documents to U.S. EPA, and shall identify the transferee(s) by name, principal business address and effective date of the transfer.

III. DEFINITIONS

5. Unless otherwise expressly provided herein, terms used in this Order which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in the statute or its implementing regulations. Whenever terms listed below are used in this Order or in the documents attached to this Order or incorporated by reference into this Order, the following definitions shall apply:

a. "Day" shall mean a calendar day unless expressly stated to be a working day. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the end of the next working day.

b. "MDNR" shall mean the Michigan Department of Natural Resources.

c. "National Contingency Plan" or "NCP" shall mean the National Contingency Plan promulgated pursuant to § 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

d. "Paragraph" shall mean a portion of this Order identified by an Arabic numeral.

e. "Performance Standards" shall mean those cleanup standards, standards of control, and other substantive requirements, criteria or limitations, identified in the Record of Decision and Statement of Work, that the remedial action and work required by this Order must attain and maintain.

f. "Record of Decision" or "ROD" shall mean the U.S. EPA Record of Decision relating to the Site, signed on March 28,

1995, by the Regional Administrator, U.S. EPA, Region V, and all attachments thereto, which is attached hereto and made a part hereof as Attachment 1.

g. "Respondents" shall mean the parties who are named in the caption to this Administrative Order. Respondents' best known addresses are listed separately in Attachment 2.

h. "RPM" shall mean the U.S. EPA's remedial project manager for the Site.

i. "Response Costs" shall mean all costs, including direct costs, indirect costs, and interest incurred by the United States to perform or support response actions at the Site, including, but not limited to, contract and enforcement costs.

j. "Section" shall mean a portion of this Order identified by a Roman numeral and includes one or more paragraphs.

k. "Section 106 Administrative Record" shall mean the Administrative Record which includes all documents (including documents that may also be contained in the separate Section 106 Liability File Index defined herein) considered or relied upon by U.S. EPA in preparation of this Order. The Section 106 Administrative Record Index is a listing of all documents included in the Section 106 Administrative Record, and is attached hereto as Attachment 3.

l. "Section 106 Liability File Index" is a listing of documents establishing the liability of Respondents for undertaking the actions ordered herein, and is attached as Attachment 4.

m. "Site" shall mean the Albion-Sheridan Township Landfill Superfund site, encompassing approximately 18 acres, located at 29975 East Erie Road near Albion, Michigan, Calhoun County, as described in the Record of Decision, and includes, but is not limited to, all property which has been contaminated as a result of a release from the facility and areas adjacent thereto.

n. "State" shall mean the State of Michigan.

o. "Statement of Work" or "SOW" shall mean the statement of work for implementation of the remedial design, remedial

action, and operation and maintenance at the Site, as set forth in Attachment 5 to this Order. The Statement of Work is incorporated into this Order and is an enforceable part of this Order.

p. "Work" shall mean all activities Respondents are required to perform under this Order and all attachments hereto, including, but not limited to, predesign, remedial design, construction, remedial action, and operation and maintenance.

IV. DETERMINATIONS

6. a. The Albion-Sheridan Township Landfill Site is an inactive landfill located at 29975 East Erie Road, approximately one mile east of Albion, in Sheridan Township, Calhoun County, Michigan. The landfill covers approximately 18 acres and is situated between Michigan Avenue and East Erie Road and is bordered on the east by the Calhoun/Jackson County line. The North Branch of the Kalamazoo River is approximately 400 feet south of the site. More detailed information concerning the geographic location is available in the Remedial Investigation Report and the ROD.

b. Prior to 1966, the Site was used as a gravel borrow pit and was also used for open, unpermitted dumping. From 1966 to 1981, the landfill was privately owned and accepted municipal and industrial wastes from the City of Albion and nearby townships. Liquid industrial wastes, including sludges and waste oil were dumped into the garbage pits along with household trash. Other materials such as paint wastes and thinners, oil and grease, and dust, sand and dirt containing fly ash and casting sand are reported to have been disposed of at the landfill.

c. In the early 1970s, the MDNR allowed the landfill to accept an estimated 6,000 cubic yards of metal plating sludges containing heavy metals, which remain buried at the site. The landfill was closed on September 30, 1981.

d. The landfill is currently covered with 1 to 4 feet of

silty sand with refuse scattered at the surface, including metal, plastic, concrete, asphalt, 55-gallon drums, wood, tires, a storage tank, and a junk crane. Test pitting conducted by the MDNR uncovered one area of concentrated drum disposal, designated Test Pit Area 9 (TP-9), where an estimated 200 to 400 drums are present. Some of the drums contain liquid and solid wastes and suspected paint sludges, including up to 2.7 ppm arsenic, 730,000 ppm 1,2,4-trimethyl benzene, 40,000 ppm m/p-xylene, 6,500 ppm acetone and 2,400 ppm aluminum.

e. The landfill ranges from 16 to 35 feet in thickness and is producing landfill gasses in the form of volative organic compounds (VOCs) in concentrations in excess of 10,000 ppm. The landfill waste contains numerous organic contaminants, including 10 VOCs, 19 semi-volatile organic compounds (SVOCs), 11 pesticides/PCBs, and inorganic contaminants including antimony, arsenic, chromium, copper, lead, mercury, and zinc.

f. A leachate plume extends southwest of the landfill for at least 900 feet and extends vertically to a depth of approximately 45 feet below the water table. The unconsolidated aquifer plume contains 1,2-dibromo-3-chloropropane and antimony at concentrations above the federal Maximum Contaminant Level (MCL). The bedrock aquifer plume contains vinyl chloride at the MCL and arsenic above the MCL, at concentrations up to 126 ug/l.

7. a. Respondent City of Albion, since at least 1966, was an operator of the Facility.

b. Respondents Corning Glass, Inc., Cooper Industries (formerly known as McGraw-Edison) and Decker Manufacturing arranged, by contract or agreement or otherwise, for the disposal or treatment of hazardous substances owned or possessed by them at the Facility. Hazardous substances of the same kind as those owned or possessed by Respondents are contained at the Facility.

c. In addition to having arranged for the disposal of hazardous substances at the Facility, Respondent Corning Glass, Inc. also transported hazardous substances it owned or possessed

to the Facility for disposal or treatment.

8. The Respondents identified in paragraph 7 are collectively referred to as "Respondents."

9. On October 4, 1989, (54 Fed.Reg. 41000, 41021), pursuant to § 105 of CERCLA, 42 U.S.C. § 9605, U.S. EPA placed the Albion-Sheridan Township Landfill Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B.

10. a. On March 19, 1990, U.S. EPA issued a Unilateral Administrative Order under § 106 of CERCLA to five potentially responsible parties to perform a removal at the Site. The removal action ordered by the UAO included site security, drum removal and disposal. Two of the PRPs, Seiler Tank Service, Inc. and Eagle-Picher Industries, Inc., performed the removal action.

b. On June 3, 1991, U.S. EPA mailed special notice letters to six PRPs to initiate negotiations for conducting the remedial investigation/feasibility study ("RI/FS") at the Site. The negotiations were unsuccessful and U.S. EPA conducted the RI/FS.

c. On June 6, 1995, U.S. EPA mailed special notice letters to Respondents to initiate negotiations on a consent decree for performance of the remedial design ("RD") and remedial action ("RA") for the Site. The Respondents declined to enter into an agreement to conduct the RD and RA for the Site in accordance with the ROD and the SOW for the Site.

11. From about January 30, 1992, to about March 28, 1995, U.S. EPA undertook a Remedial Investigation and Feasibility Study ("RI/FS") for the Site, pursuant to CERCLA and the National Contingency Plan.

12. Pursuant to § 117 of CERCLA, 42 U.S.C. § 9617, U.S. EPA published notice of the completion of the FS and of the proposed plan for remedial action on September 26, 1994, and provided

opportunity for public comment on the proposed remedial action. Similarly, Respondents were given an opportunity to comment on the proposed plan for remedial action and to supplement the Administrative Record regarding a decision for selection of the final plan for remedial action.

13. The decision by U.S. EPA on the remedial action to be implemented at the Albion-Sheridan Township Landfill Site is embodied in a Record of Decision ("ROD"), executed on March 28, 1995, on which the State has given its concurrence. The ROD is an enforceable part of this Order and is attached hereto as Attachment 1. The ROD is supported by an Administrative Record which contains the documents and information upon which U.S. EPA based the selection of the response action. The U.S. EPA's selected response action set out in the ROD has been determined to provide adequate protection of public health, welfare and the environment; satisfies all applicable and relevant federal and State environmental laws; and is cost effective.

14. The Albion-Sheridan Township Landfill Site poses an imminent and substantial endangerment to trespassers on the property and to current and future nearby residents. Although the site is currently fenced, holes have been cut in the fence at numerous occasions to allow trespassers access to the site. This practice is likely to continue in the future. Several residences are currently located within 1,500 feet of the site, including the Amberton Village Subdivision to the east, the Orchard Knoll subdivision to the west, and individual residences to the south and south west. 13,500 persons obtain their drinking water from public and private wells within a three-mile radius of the site. Hazardous substances released at the Site include arsenic, chromium, and various volatile organic compounds. Arsenic is a human carcinogen and has multiple toxic effects when inhaled, ingested, or through skin contact, as described in paragraph 17 below. Chromium can cause liver, kidney or lung damage if

ingested or inhaled and is also a carcinogen in certain forms. Some of the VOCs present at the site are carcinogens and can also cause gastro-intestinal bleeding and other systemic effects if inhaled.

15. In 1980, the MDNR collected and analyzed samples of non-containerized sludges that were being disposed at the site. The sludges contained heavy metals, including chromium (250,000 mg/kg), zinc (150,000 mg/kg), nickel (1,000 mg/kg) and lead (280 mg/kg), which remain buried at the site. These levels exceed State standards for clean soils by many orders of magnitude. Samples of landfill waste from borings conducted by U.S. EPA during the RI/FS contained numerous contaminants, including 10 VOCs, 19 semi-volatile organic compounds (SVOCs), and 11 pesticides/PCBs. The most concentrated contaminant was 4-Methyl phenol at 15 mg/kg. Several inorganic substances were present at levels above background subsurface soils, including antimony, arsenic, chromium, copper, lead, mercury, and zinc. The highest concentrations include lead at 208 mg/kg, arsenic at 13.1 mg/kg and chromium at 13.5 mg/kg. One sample was suitable for the TCLP metals analysis. Results indicate the presence of barium and lead in the TCLP leachate.

a. During 1992 to 1994, U.S. EPA collected and analyzed samples of leachate at the base of the landfill and of groundwater adjacent to the site. The leachate contained benzene (7ug/l), vinyl chloride (14 ug/l), nickel (279 ug/l) and nitrate/nitrite (14 ug/l) at levels above Federal drinking water standards. The groundwater contained arsenic (126 ug/l), antimony (71 ug/l), and 1,2-dibromo-3-chloropropane (8 ug/l) at levels above Federal drinking water standards.

16. The major present routes of exposure to hazardous substances at the Albion-Sheridan Township Landfill are skin contact, ingestion, and inhalation of contaminants present in the landfill wastes and ingestion, skin contact and inhalation of contaminants

in groundwater. Present adult and child trespassers on the landfill may come into contact with hazardous substances in the landfill and may breathe or inadvertently injest contaminants. Future rainstorms could carry wastes and contaminated sediments from the landfill toward nearby residences and the Kalamazoo River, where it could adversely affect residents and recreational users of the river as well as wildlife and aquatic life. Rainwater percolating through the uncapped wastes is presently leaching contaminants into the groundwater and carrying those contaminants with it as it flows toward nearby residential wells and the Kalamazoo River.

17. Both trespassers and nearby residents are at risk from the contaminants in the Albion-Sheridan Township Landfill. One residence is located immediately adjacent to the landfill to the south and five additional residences are located approximately 1000 to 1500 feet southwest of the landfill along East Erie Road. The Amberton Village housing development is located adjacent to the site on the east side, with the closest residences approximately 500 feet from the landfill. Several residences and commercial businesses are located along Michigan Avenue approximately 500 feet north of the site. Immediately west of the site is undeveloped land formerly used for agriculture. Orchard Knoll subdivision is located approximately 1,500 feet northwest of the landfill. Future land uses near the landfill are expected to be similar to present uses. Approximately one mile west of the landfill is the city of Albion, with a population of 10,066 according to the 1990 census, which does not include approximately 1,700 students enrolled at Albion College.

a. For ingestion and skin contact with the groundwater from the shallow bedrock near the landfill, the Hazard Index values are approximately 12 for adults and 54 for children, principally because of the concentration of arsenic, and to a lesser amount, thallium and antimony. Ingestion and skin contact with groundwater from the unconsolidated sediments and shallow

bedrock aquifer in this area present total carcinogenic risks in the range of 2.4 X 10^{-4} to 2.1 X 10^{-3}. The concentration of arsenic in the shallow bedrock aquifer and 1,2-dibromo-3-chloropropane in the unconsolidated sediment aquifer result in an exceedance of the one-in-ten thousand risk level.

b. Arsenic is a human carcinogen. Ingestion of arsenic increases the risk of developing skin cancer, most commonly squamous cell carcinomas. Ingestion of arsenic has also been reported to increase the risk of cancer in the liver, bladder, kidneys and lungs. Long-term ingestion of arsenic also causes cardiovascular, gastrointestinal, hematological, hepatic (liver), dermal, and neurological effects. These include irritation of stomach and intestines, decreased production of red and white blood cells, abnormal hearth rhythm, blood-vessel damage, and impaired nerve function. The concentration of arsenic in groundwater at the Albion-Sheridan Township Landfill exceeds the lowest concentrations reported by the Agency for Toxic Substances and Disease Registry thought to cause both human cancer and non-carcinogenic effects.

c. The carcinogenic and non-carcinogenic risks of contact with the current landfill surface were not quantified pursuant to the presumptive remedy guidance on municipal landfills. However, both carcinogenic and non-carcinogenic risks from contact with landfill wastes could exceed the acceptable risk range of 10^{-4} to 10^{-6} or a Hazard Index of 1.

18. On March 19, 1990, U.S. EPA issued a Unilateral Administrative Order (UAO) to five potentially responsible parties (PRPs) to conduct a removal action, of which two, Eagle-Picher Industries, Inc. and Seiler Tank Truck Services, Inc. performed the removal. This action included sampling, overpacking, and removing aproximately 40 drums of waste from the surface of the landfill, transporting the drums off-site for disposal, and partially securing the site with a fence. U.S. EPA

determined that the action was complete on September 14, 1990.

19. The major components of the selected remedy include:

* Removal and off-site treatment and disposal of drums which contain hazardous and liquid wastes from Test Pit Area #9 and other drums encountered during grading of the landfill surface;

* Construction of a solid waste landfill cover (cap) which makes use of a Flexible Membrane Liner (FML) over the entire landfill mass;

* Installation of an active landfill gas collection system including flaring to treat the off-gas from the landfill, unless U.S. EPA approves passive venting following design studies;

* Monitoring of groundwater to ensure effectiveness of the remedial action in lowering the arsenic concentration in groundwater through natural oxidation.

* Use of institutional controls on landfill property to limit both land and groundwater use and on adjacent property to limit only groundwater use until the clean-up standard is attained (estimated at 14 years);

The ROD selected as a contingent remedy for treatment of groundwater by in-situ oxidation if, five years after landfill cap installation, the arsenic contamination in the groundwater is not declining at the specified rate or if contamination threatens residential wells.

20. As described further in the ROD, each component of the remedy is designed to address the endangerment posed by the release or threat of relase of hazardous constituents. Removal and off-site treatment and disposal of drummed waste reduces the risk of hazardous and liquid wastes leaching into the groundwater and surface water, where it can threaten human and aquatic health. Capping the landfill with an FML cap virtually eliminates the risk of direct human contact with the wastes in the landfill and substantially reduces the generation of leachate which contaminates groundwater. Controlling landfill gas protects the landfill cap from adverse pressure buildup prevents migration of landfill gas laterally off-site. Groundwater monitoring serves to confirm that arsenic is being removed from the groundwater through natural oxidation and serves as an early warning system for any arsenic that may migrate toward residential wells. Institutional controls on the landfill and on groundwater use from the adjacent property will further reduce the risk of human contact with contaminants in the landfill and of contaminants released from the landfill to groundwater. If the natural oxidation is not effective as expected, the contingent remedy for in-situ treatment will speed up the removal of arsenic from the groundwater, so that it does not endanger drinking water wells.

21. The Albion-Sheridan Township Landfill Site is a "facility" as defined in § 101(9) of CERCLA, 42 U.S.C. § 9601(9).

22. Each Respondent is a "person" as defined in § 101(21) of CERCLA, 42 U.S.C. § 9601(21).

23. Each Respondent is a liable party as defined in § 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is subject to this Order under § 106(a) of CERCLA, 42 U.S.C. § 9606(a).

24. "Hazardous substances" as defined in § 101(14) of CERCLA, 42 U.S.C. § 9601(14), are present at the Site.

25. These hazardous substances have been and threaten to continue to be "released" from the Facility as that term is defined in § 101(22) of CERCLA, 42 U.S.C. § 9601(22).

26. The past disposal and migration of hazardous substances from the Facility constitutes a "release". In addition, the potential for future migration of hazardous substances from the Site poses a threat of a "release" as defined in § 101(22) of CERCLA, 42 U.S.C. § 9601(22).

27. The release and threat of release of one or more hazardous substances from the Facility is or may be presenting an imminent and substantial endangerment to the public health or welfare or the environment.

28. The actions required by this Order are necessary to protect the public health, welfare, or the environment and are consistent with the National Contingency Plan, as amended, and CERCLA.

V. NOTICE TO THE STATE

29. U.S. EPA has notified the State of Michigan, Department of Natural Resources, that U.S. EPA intends to issue this Order. U.S. EPA will consult with the State and the State will have the opportunity to review and comment to U.S. EPA regarding all work to be performed, including remedial design, reports, technical data and other deliverables, and any other issues which arise while the Order remains in effect.

VI. ORDER

30. Based on the foregoing, each Respondent is hereby ordered to comply with all of the provisions of this Order, including but not limited to all attachments to this Order, all documents incorporated by reference into this Order, and all schedules and deadlines contained in this Order, attached to this Order, or

incorporated by reference into this Order.

VII. WORK TO BE PERFORMED

31. Within five (5) days after the effective date of this Order, Respondents shall contact the present owner(s) of the Site and shall record Notice of and/or a copy of this Order in the appropriate governmental office where land ownership and transfer records are filed or recorded, and shall ensure that the recording of said notice and/or Order is indexed to the title of each and every parcel of property at the Site, so as to provide notice to third parties of the issuance and terms of this Order with respect to those properties. Respondent(s) shall, within 15 days after the effective date of this Order, send notice of such recording and indexing to U.S. EPA.

32. All workplans, reports, engineering design documents, and other deliverables (workplans and deliverables), as described throughout this Order, shall be submitted to MDNR (except documents claimed to contain confidential business information) and U.S. EPA. All workplans and deliverables will be reviewed and either approved, approved with modifications, or disapproved by U.S. EPA, in consultation with MDNR. In the event of approval or approval with modifications by U.S. EPA, Respondents shall proceed to take any action required by the workplan, report, or other item, as approved or modified by U.S. EPA. If the workplan or other deliverable is approved with modifications or disapproved, U.S. EPA will provide, in writing, comments or modifications required for approval. Respondents shall amend the workplan or other deliverable to incorporate only those comments or modifications required by U.S. EPA. Within twenty-one (21) days of the date of U.S. EPA's written notification of approval with modifications or disapproval, Respondents shall submit an amended workplan or other deliverable. U.S. EPA shall review the amended workplan or deliverable and either approve or disapprove it. Failure to submit a workplan, amended workplan or other deliverable shall constitute

noncompliance with this Order. Submission of an amended workplan or other deliverable which fails to incorporate all of U.S. EPA's required modifications, or which includes other unrequested modifications, shall also constitute noncompliance with this Order. Approval by U.S. EPA of the Workplan or other deliverable shall cause said approved workplan or other deliverable to be incorporated herein as an enforceable part of this Order. If any workplan or other deliverable is not approved by U.S. EPA, Respondents shall be deemed to be in violation of this Order.

33. In the event of an inconsistency between this Order and any subsequent approved workplan or other deliverable, the terms of this Order shall control.

A. Remedial Design

34. Within sixty (60) days after the effective date of this Order, Respondents shall submit a workplan for the remedial design at the Site ("Remedial Design Workplan" or "RD Workplan") to U.S. EPA for review and approval. The RD Workplan shall include a detailed step-by-step plan for completing the remedial design for the remedy selected in the ROD, and for attaining and maintaining all requirements and performance standards identified in the ROD and Statement of Work. The RD Workplan shall describe in detail the tasks and deliverables Respondents will complete during the remedial design phase, and a schedule for completing the tasks and deliverables in the RD Workplan. The RD Workplan shall be consistent with, and provide for implementation of, the Statement of Work, and shall comport with U.S. EPA's "Superfund Remedial Design and Remedial Action Guidance, OSWER Directive 9355.0-4A." The RD Workplan shall include a plan for pre-design studies, a Quality Assurance Project Plan (QAPP) and a Health and Safety Plan (HSP) for U.S. EPA review. The QAPP and HSP shall address all pre-design work and to the extent possible, also should address all Remedial Action work. The HSP shall be consistent with the Occupational Safety and Health Act (OSHA) and U.S. EPA

requirements, including but not limited to the regulations at 54 Fed. Reg. 9294. The major tasks and deliverables described in the RD Workplan shall include, but not be limited to, the following: (1) Pre-Design Studies; (2) Pre-Design Studies Report; (3) Preliminary Design; (4) Intermediate Design Meeting; (5) Final Design. The Preliminary Design and Final Design packages shall each include the following: (1) a design schedule, including a schedule for submission and approval of any required permit applications; (2) plans and specifications; (3) Performance Monitoring Plan (PMP); (4) Contingency Plan (unless included in Site Health and Safety Plan); and (5) Construction Quality Assurance Plan (CQAP). The PMP shall include plans for monitoring performance of the landfill cap, landfill gas monitoring, and groundwater monitoring. The CQAP shall describe the approach to quality assurance during construction activities at the Site and shall specify a quality assurance official, independent of the construction contractor, to conduct a quality assurance program during the construction phase of the project. The Final Design submittal shall include an Operation and Maintenance Plan.

35. Upon approval of the RD Workplan by U.S. EPA, Respondents shall implement the RD Workplan and submit all design deliverables according to the schedule in the approved RD Workplan. Any noncompliance with the approved RD Workplan shall be a violation of this Order.

B. Remedial Action

36. Within thirty (30) days after U.S. EPA approves all deliverables required as part of the Final Design, Respondents shall submit a Remedial Action Workplan (RA Workplan) for review and approval. The RA Workplan shall be developed in accordance with the ROD and the Statement of Work, and shall be consistent with the final design as approved by U.S. EPA. The RA Workplan shall include methodologies, plans and schedules for completion of at least the following: (1) selection of the remedial action contractor; (2) implementation of a Construction Quality Assurance

Plan; (3) identification of and satisfactory compliance with any applicable permitting requirements; (4) implementation of Performance Monitoring Plan; (5) implementation of the Operation and Maintenance Plan; and (6) Contingent Remedy Groundwater Monitoring Report. The RA Workplan shall include a schedule for implementing all remedial action tasks identified in the Statement of Work and shall identify the initial formulation of Respondents' remedial action project team, including the supervising contractor. Respondents shall also submit to U.S. EPA any additions necessary to ensure that the Health and Safety Plan submitted with the RD Workplan is also adequate for field activities required by the RA Workplan. The Health and Safety Plan for field activities shall conform to applicable Occupational Safety and Health Administration and U.S. EPA requirements, including but not limited to the regulations at 54 Fed. Reg. 9294.

37. Upon approval of the RA Workplan by U.S. EPA, Respondents shall implement the RA Workplan in accordance with any and all instructions from the RPM and in accordance with the schedules in the RA Workplan. Unless otherwise directed by U.S. EPA, Respondents shall not commence remedial action at the Site prior to approval of the RA Workplan. Any noncompliance with the approved RA Workplan shall be a violation of this Order.

38. The work performed by Respondents pursuant to this Order shall, at a minimum, achieve the performance standards specified in the Record of Decision and the Statement of Work. Nothing in this Order, or in U.S. EPA's approval of any workplan or other deliverable, shall be deemed to constitute a warranty or representation of any kind by U.S. EPA that full performance of the remedial design or remedial action will achieve the performance standards set forth in the ROD and in the Statement of Work. Respondents' compliance with such approved documents does not foreclose U.S. EPA from seeking additional work.

39. All materials removed from the Facility shall be disposed of or treated at a facility approved in advance of removal by U.S. EPA's RPM and in accordance with: 1) § 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3); 2) the Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. § 6901, et seq., as amended; 3) the U.S. EPA "Revised Off-Site policy," OSWER Directive 9834.11, November 13, 1987; and 4) all other applicable federal, State, and local requirements. The identity of the receiving facility and state will be determined by Respondents following the award of the contract for remedial action construction. Respondents shall provide written notice to the RPM which shall include all relevant information, including the information required by paragraph 40 below, as soon as practicable after the award of the contract and before the hazardous substances are actually shipped off-Site.

40. Prior to any off-site shipment of hazardous substances from the Site to an out-of-state waste management facility, Respondents shall provide written notification to the appropriate state environmental official in the receiving state and to U.S. EPA's Remedial Project Manager (RPM) of such shipment of hazardous substances. However, the notification of shipments to the state shall not apply to any off-Site shipments when the total volume of all shipments from the Site to the state will not exceed ten (10 cubic yards. The notification shall be in writing, and shall include the following information, where available: (1) the name and location of the facility to which the hazardous substances are to be shipped; (2) the type and quantity of the hazardous substances to be shipped; (3) the expected schedule for the shipment of the hazardous substances; and (4) the method of transportation. Respondents shall notify the receiving state of major changes in the shipment plan, such as a decision to ship the hazardous substances to another facility within the same state, or to a facility in another state.

41. Respondents shall cooperate with U.S. EPA in providi

information regarding the work to the public. When requested by U.S. EPA, Respondents shall participate in the preparation of such information for distribution to the public and in public meetings which may be held or sponsored by U.S. EPA to explain activities at or relating to the Site.

42. Within thirty (30) days after Respondents conclude that the remedial action has been fully performed, Respondents shall so notify U.S. EPA and shall schedule and conduct a pre-certification inspection to be attended by Respondents and U.S. EPA. The pre-certification inspection shall be followed by a written report submitted within thirty (30) days of the inspection by a registered professional engineer and Respondents' Project Coordinator certifying that the remedial action has been completed in full satisfaction of the requirements of this Order. If, after completion of the pre-certification inspection and receipt and review of the written report, U.S. EPA determines that the remedial action or any portion thereof has not been completed in accordance with this Order, U.S. EPA shall notify Respondents in writing of the activities that must be undertaken to complete the remedial action and shall set forth in the notice a schedule for performance of such activities. Respondents shall perform all activities described in the notice in accordance with the specifications and schedules established therein. If U.S. EPA concludes, following the initial or any subsequent certification of completion by Respondents that the remedial action has been fully performed in accordance with this Order, U.S. EPA may notify Respondents that the remedial action has been fully performed. U.S. EPA's notification shall be based on present knowledge and Respondents' certification to U.S. EPA, and shall not limit U.S. EPA's right to perform periodic reviews pursuant to § 121(c) of CERCLA, 42 U.S.C. § 9621(c), or to take or require any action that in the judgment of U.S. EPA is appropriate at the Site, in accordance with 42 U.S.C. §§ 9604, 9606, or 9607.

VIII. PERIODIC REVIEW

43. Under § 121(c) of CERCLA, 42 U.S.C. § 9621(c), and any applicable regulations, where hazardous substances will remain on Site at the completion of the remedial action, U.S. EPA may review the Site to assure that the work performed pursuant to this Order adequately protects human health and the environment. Until such time as U.S. EPA certifies completion of the work, Respondents shall conduct the requisite studies, investigations, or other response actions as determined necessary by U.S. EPA in order to permit U.S. EPA to conduct the review under § 121(c) of CERCLA. As a result of any review performed under this paragraph, Respondents may be required to perform additional work or to modify work previously performed.

IX. ADDITIONAL RESPONSE ACTIONS

44. In the event that U.S. EPA determines that additional work or modifications to work are necessary to meet performance standards, to maintain consistency with the final remedy, or to otherwise protect human health or the environment, U.S. EPA will notify Respondents that additional response actions are necessary. U.S. EPA may also require Respondents to modify any plan, design, or other deliverable required by this Order, including any approved modifications.

45. Within thirty (30) days of receipt of notice from U.S. EPA that additional response activities are necessary, Respondents shall submit for approval an Additional RD/RA Workplan pursuant to paragraph 32 herein. The Additional RD/RA Workplan shall conform to this Order's requirements for RD and RA Workplans. Upon U.S. EPA's approval of the Additional RD/RA Workplan, the Additional RD/RA Workplan shall become an enforceable part of this Order, and Respondents shall implement the Additional RD/RA Workplan for additional response activities in accordance with the standards, specifications, and schedule contained therein. Failure to submit

an Additional RD/RA Workplan shall constitute noncompliance wit this Order.

X. ENDANGERMENT AND EMERGENCY RESPONSE

46. In the event of any event during the performance of the wor which causes or threatens to cause a release of a hazardou substance or which may present an immediate threat to public healt or welfare or the environment, Respondents shall immediately tak all appropriate action to prevent, abate, or minimize the threat, and shall immediately notify U.S. EPA's RPM or alternate RPM. If neither of these persons is available Respondents shall notify the U.S. EPA Emergency Response Unit, Region V. Respondents shall take further action in consultation with U.S. EPA's RPM and in accordance with all applicable provisions of this Order, including but not limited to the health and safety plan and the contingency plan. In the event that Respondents fails to take appropriate response action as required by this paragraph, and U.S. EPA takes that action instead, Respondents shall reimburse U.S. EPA for all costs of the response action not inconsistent with the NCP. Respondents shall pay the response costs in the manner described in section XIX (reinbursement of response costs) of this Order, within thirty (30) days of U.S. EPA's demand for payment.

47. Nothing in the preceding paragraph 46 shall be deemed to limit any authority of the United States to take, direct, or order all appropriate action to protect human health and the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances on, at, or from the Site.

XI. PROGRESS REPORTS

48. In addition to the other deliverables set forth in this Order, Respondents shall provide monthly progress reports to U.S. EPA and MDNR with respect to actions and activities undertaken pursuant to this Order. The progress reports shall be submitted on or before the 10th day of each month following the effective date of this

Order. Respondent's obligation to submit progress reports continues until U.S. EPA gives Respondents written notice under paragraph 84 of this Order. At a minimum these progress reports shall: (1) describe the actions which have been taken to comply with this Order during the prior month; (2) include all results of sampling and tests and all other data received by Respondents and not previously submitted to U.S. EPA; (3) describe all work planned for the next 90-days with schedules relating such work to the overall project schedule for RD/RA completion; and (4) describe all problems encountered and any anticipated problems, any actual or anticipated delays, and solutions developed and implemented to address any actual or anticipated problems or delays.

XII. QUALITY ASSURANCE, SAMPLING AND DATA ANALYSIS

49. Respondents shall use the quality assurance, quality control, and chain of custody procedures described in the "U.S. EPA NEIC Policies and Procedures Manual," May 1978, revised May 1986, U.S. EPA-330/9-78-001-R; U.S. EPA's "Guidelines and Specifications for Preparing Quality Assurance Program Documentation," June 1, 1987; U.S. EPA's "Data Quality Objective Guidance," (U.S. EPA/540/G87/003 and 004) and any amendments to these documents, while conducting all sample collection and analysis activities required herein by any plan. To provide quality assurance and maintain quality control, Respondents shall:

a. Prior to the commencement of any sampling and analysis under this Order, Respondents shall submit a Quality Assurance Project Plan (QAPP) to the U.S. EPA and MDNR that is consistent with the SOW, workplans, U.S. EPA's "Interim Guidelines and Specifications For Preparing Quality Assurance Project Plans" (QAM-005/80), and any subsequent amendments.

b. Prior to the development and submittal of a QAPP, Respondents shall attend a pre-QAPP meeting sponsored by U.S. EPA to identify all monitoring and data quality objectives. U.S. EPA, after review of the submitted QAPP, will either approve, conditionally approve, or disapprove the QAPP. Upon notification

of conditional or disapproval, Respondents shall make all required modifications to the QAPP within twenty-one (21) days of receipt of such notification.

c. Use only laboratories which have a documented Quality Assurance Program that complies with U.S. EPA guidance document QAMS-005/80 and subsequent amendments.

d. Ensure that the laboratory used by the Respondents for analyses, performs according to a method or methods deemed satisfactory to U.S. EPA and submits all protocols to be used for analyses to U.S. EPA at least 30 days before beginning analysis.

e. Ensure that U.S. EPA personnel and U.S. EPA's authorized representatives are allowed access to the laboratory and personnel utilized by the Respondents for analyses.

50. Respondents shall notify U.S. EPA and MDNR not less than fourteen (14) days in advance of any sample collection activity, unless a shorter time period is approved by U.S. EPA. At the request of U.S. EPA, Respondents shall allow U.S. EPA or its authorized representatives to take split or duplicate samples of any samples collected by Respondents with regard to the Site or pursuant to the implementation of this Order. In addition, U.S. EPA shall have the right to take any additional samples that U.S. EPA deems necessary.

XIII. COMPLIANCE WITH APPLICABLE LAWS

51. All activities by Respondents pursuant to this Order shall be performed in accordance with the requirements of all federal and State laws and regulations. U.S. EPA has determined that the activities contemplated by this Order are consistent with the National Contingency Plan.

52. Except as provided in § 121(e) of CERCLA and the NCP, no permit shall be required for any portion of the work conducted entirely on-Site. Where any portion of the work requires a federal or State permit, Respondents shall submit timely applications and

take all other actions necessary to obtain and to comply with all such permits or approvals.

53. This Order is not and shall not be construed to be, a permit issued pursuant to any federal or State statute or regulation.

XIV. REMEDIAL PROJECT MANAGER

54. All communications, whether written or oral, from Respondents to U.S. EPA shall be directed to U.S. EPA's Remedial Project Manager. Respondents shall submit to U.S. EPA and the MDNR two (2) copies of all documents, including plans and reports, and one (1) copy of other pieces of correspondence, which are developed pursuant to this Order, and shall send these documents by certified mail, return receipt requested or overnight mail.

U.S. EPA's Remedial Project Manager is:

Leah H. Evison
U.S. EPA Region 5 (HSR-6J)
Chicago, Illinois 60604
(312) 886-4696

55. U.S. EPA may change its Remedial Project Manager. If U.S. EPA changes its Remedial Project Manager, U.S. EPA will inform Respondents in writing of the name, address, and telephone number of the new Remedial Project Manager.

56. U.S. EPA's RPM shall have the authority lawfully vested in a Remedial Project Manager (RPM) and On-Scene Coordinator (OSC) by the National Contingency Plan. U.S. EPA's RPM shall have authority, consistent with the NCP, to halt any work required by this Order, and to take any necessary response action.

XV. PROJECT COORDINATOR AND CONTRACTORS

57. All aspects of the Work to be performed by Respondents pursuant to this Order shall be under the direction and supervision of a Project Coordinator qualified to undertake and complete the requirements of this Order. The Project Coordinator shall be the

RPM's primary point of contact with the Respondents and shall possess sufficient technical expertise regarding all aspects of the work. Within fifteen (15) days after the effective date of this Order, Respondents shall notify U.S. EPA in writing of the name and qualifications of the Project Coordinator, including primary support entities and staff, proposed to be used in carrying out work under this Order. U.S. EPA reserves the right to disapprove the proposed Project Coordinator.

58. Within thirty (30) days after U.S. EPA approves the RA Workplan, Respondents shall identify a proposed construction contractor and notify U.S. EPA in writing of the name, title, and qualifications of the construction contractor proposed to be used in carrying out work under this Order.

59. Respondents shall submit a copy of the construction contractor solicitation documents to U.S. EPA not later than five (5) days after publishing the solicitation documents. Upon U.S. EPA's request, Respondents shall submit complete copies of all bid packages received from all contract bidders.

60. At least seven (7) days prior to commencing any work at the Site pursuant to this Order, Respondents shall submit to U.S. EPA a certification that Respondents or their contractors and subcontractors have adequate insurance coverage or have indemnification for liabilities for injuries or damages to persons or property which may result from the activities to be conducted by or on behalf of Respondents pursuant to this Order. Respondents shall ensure that such insurance or indemnification is maintained for the duration of the work required by this Order.

61. U.S. EPA retains the right to disapprove of the Project Coordinator and any contractor, including but not limited to remedial design contractors and construction contractors retained by the Respondents. In the event U.S. EPA disapproves a Project

Coordinator or contractor, Respondents shall retain a new project coordinator or contractor to perform the work, and such selection shall be made within fifteen (15) days following the date of U.S. EPA's disapproval. If at any time Respondents propose to use a new project coordinator or contractor, Respondents shall notify U.S. EPA of the identity of the new project coordinator or contractor at least fifteen (15) days before the new project coordinator or contractor performs any work under this Order.

XVI. SITE ACCESS AND DOCUMENT AVAILABILITY

62. In the event that the Site, the off-Site area that is to be used for access, property where documents required to be prepared or maintained by this Order are located, or other property subject to or affected by this response action, is owned in whole or in part by parties other than those bound by this Order, Respondents will obtain, or use their best efforts to obtain, site access agreements from the present owner(s), within sixty (60) days of the effective date of this Order. Said agreements shall provide access for U.S. EPA, its contractors and oversight officials, the State and its contractors, and Respondents or Respondents authorized representatives and contractors. Said agreements shall specify that Respondents is not U.S. EPA's representative with respect to liability associated with Site activities. Copies of such agreements shall be provided to U.S. EPA prior to Respondent's initiation of field activities. Respondent's best efforts shall include providing reasonable compensation to any off-Site property owner. If access agreements are not obtained within the time referenced above, Respondents shall immediately notify U.S. EPA of its failure to obtain access.

63. If Respondents cannot obtain the necessary access agreements, U.S. EPA may exercise non-reviewable discretion and; (1) use its legal authorities to obtain access for the Respondent(s); (2) conduct response actions at the property in question; or (3) terminate this Order. If U.S. EPA conducts a response action and

does not terminate the Order, Respondents shall perform all other activities not requiring access to that property. Respondents shall integrate the results of any such tasks undertaken by U.S. EPA into its reports and deliverables. Respondents shall reimburse U.S. EPA, pursuant to section XIX (reinbursement of response costs) of this Order, for all response costs (including attorney fees) incurred by the United States to obtain access for Respondents.

64. Respondents shall allow U.S. EPA and its authorized representatives and contractors to enter and freely move about all property at the Site and off-Site areas subject to or affected by the work under this Order or where documents required to be prepared or maintained by this Order are located, for the purposes of inspecting conditions, activities, the results of activities, records, operating logs, and contracts related to the Site or Respondents and its representatives or contractors pursuant to this Order; reviewing the progress of the Respondents in carrying out the terms of this Order; conducting tests as U.S. EPA or its authorized representatives or contractors deem necessary; using a camera, sound recording device or other documentary type equipment; and verifying the data submitted to U.S. EPA by Respondents. Respondents shall allow U.S. EPA and its authorized representatives to enter the Site, to inspect and copy all records, files, photographs, documents, sampling and monitoring data, and other writings related to work undertaken in carrying out this Order. Nothing herein shall limit U.S. EPA's right of entry or inspection authority under federal law, and U.S. EPA retains all of its information gathering and enforcement authorities and rights under CERCLA, RCRA, and any other applicable statutes and regulations.

XVII. RECORD PRESERVATION

65. On or before the effective date of this Order, Respondents shall submit a written certification to U.S. EPA that they have not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to their

potential liability with regard to the Site since the time of their notification of potential liability by U.S. EPA or the State. Respondents shall not dispose of any such documents without prior approval by U.S. EPA. Upon U.S. EPA's request, Respondents shall make all such documents available to U.S. EPA and shall submit a log of any such documents claimed to be privileged for any reason. This privilege log shall list, for each document, the date, author, addressees (including courtesy copies or "cc"s and "bcc"s) and subject matter of the document.

66. Respondents shall provide to U.S. EPA upon request, copies of all documents and information within their or their contractors, subcontractors or agents possession or control relating to activities at the Site or to the implementation of this Order, including but not limited to sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, traffic routing, correspondence, or other documents or information. Respondents shall also make available to U.S. EPA their employees, agents, or representatives for purposes of investigation, information gathering or testimony concerning the performance of the work.

67. Until ten (10) years after U.S. EPA provides notice pursuant to paragraph 84 of this Order, Respondents shall preserve, and shall instruct their contractors and agents to preserve, all documents, records, and information of whatever kind, nature or description relating to the performance of the work. Upon the conclusion of this document retention period, Respondents shall notify the United States at least ninety (90) days prior to the destruction of any such records, documents or information, and, upon request of the United States, Respondents shall deliver all such documents, records and information to U.S. EPA.

68. Respondents may assert a claim of business confidentiality covering part or all of the information submitted to U.S. EPA

pursuant to the terms of this Order under 40 C.F.R. § 2.203, provided such claim is not inconsistent with § 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7) or other provisions of law. This claim shall be asserted in the manner described by 40 C.F.R. § 2.203(b) and substantiated by Respondents at the time the claim is made. Information determined to be confidential by U.S. EPA will be given the protection specified in 40 C.F.R. Part 2. If no such claim accompanies the information when it is submitted to U.S. EPA, it may be made available to the public by U.S. EPA or the State without further notice to the Respondents. Respondents shall not assert confidentiality claims with respect to any data or documents related to Site conditions, sampling, or monitoring.

69. Respondents shall maintain, for the period during which this Order is in effect, an index of documents that Respondents claim contain confidential business information ("CBI"). The index shall contain, for each document, the date, author, addressee, and subject of the document. Respondents shall submit an updated copy of the index to U.S. EPA with each new document(s) claimed to be CBI. The updated index shall also indicate any documents for which CBI claims have been withdrawn.

XVIII. DELAY IN PERFORMANCE

70. Any delay in performance of this Order according to its terms and schedules that is not properly justified by Respondents, and approved by U.S. EPA, under the terms of this section shall be considered a violation of this Order. Any delay in performance of this Order shall not affect Respondents obligations to fully perform all obligations under the terms and conditions of this Order.

71. Respondents shall notify U.S. EPA of any delay or anticipated delay in performing any requirement of this Order. Such notification shall be made by telephone to U.S. EPA's RPM or Alternate RPM within forty eight (48) hours after Respondents first

knew or should have known that a delay might occur. Respondents shall adopt all reasonable measures to avoid or minimize any such delay. Within seven (7) days after notifying U.S. EPA by telephone, Respondents shall provide written notification fully describing the nature of the delay, any justification for delay, any reason why Respondents should not be held strictly accountable for failing to comply with any relevant requirements of this Order, the measures planned and taken to minimize the delay, and a schedule for implementing the measures that will be taken to mitigate the effect of the delay. Increased costs or expenses associated with implementation of the activities called for in this Order is not a justification for any delay in performance.

XIX. REIMBURSEMENT OF RESPONSE COSTS

72. Respondents shall reimburse U.S. EPA, upon written demand, for all response costs incurred by the United States in overseeing Respondents' implementation of the requirements of this Order. U.S. EPA may submit to Respondents on a periodic basis an accounting of all oversight response costs incurred by the United States with respect to this Order. U.S. EPA's Itemized Cost Summary Reports, or such other summary as may be certified by U.S. EPA, shall serve as the accounting and basis for payment demands.

73. Respondents shall, within thirty (30) days of receipt of each U.S. EPA accounting, remit a certified or cashier's check for the amount of those costs. Interest shall accrue from the later of the date that payment of a specified amount is demanded in writing or the date of the expenditure. The interest rate is the rate established by the Department of the Treasury pursuant to 31 U.S.C. § 3717 and 4 C.F.R. § 102.13.

74. Checks shall be made payable to the "U.S. EPA Hazardous Substances Superfund" and shall include the name of the Site, the Site identification number, the account number and the title of this Order. Checks shall be forwarded to:

U.S. Environmental Protection Agency
Superfund Accounting
P.O. Box 70753
Chicago, Illinois 60673

Respondents shall send copies of each transmittal letter and check to the U.S. EPA's RPM.

XX. UNITED STATES NOT LIABLE

75. The United States and U.S. EPA are not to be construed as parties to, and do not assume any liability for, any contract entered into by the Respondents to carry out the activities pursuant to this Order. The proper completion of the work under this Order is solely the responsibility of the Respondents. The United States and U.S. EPA, by issuance of this Order, also assume no liability for any injuries or damages to persons or property resulting from acts or omissions by Respondents, or their directors, officers, employees, agents, representatives, successors, assigns, contractors, or consultants in carrying out any action or activity required by this Order.

XXI. ENFORCEMENT AND RESERVATIONS

76. U.S. EPA reserves the right to bring an action against Respondents under § 107 of CERCLA, 42 U.S.C. § 9607, for recovery of any response costs incurred by the United States related to this Order and not reimbursed by Respondents. This reservation shall include but not be limited to past costs, direct costs, indirect costs, the costs of oversight, the costs of compiling the cost documentation to support oversight cost demand, as well as accrued interest as provided in § 107(a) of CERCLA.

77. Notwithstanding any other provision of this Order, at any time during the response action, U.S. EPA may perform its own studies, complete the response action (or any portion of the response action) as provided in CERCLA and the NCP, and seek reimbursement from Respondents for its costs, or seek any other appropriate

relief.

78. Nothing in this Order shall preclude U.S. EPA from taking any additional enforcement actions, including modification of this Order or issuance of additional Orders, and/or additional remedial or removal actions as U.S. EPA may deem necessary, or from requiring Respondents in the future to perform additional activities pursuant to CERCLA, 42 U.S.C. § 9606(a), et seq., or any other applicable law. This Order shall not affect any Respondent's liability under CERCLA § 107(a), 42 U.S.C. § 9607(a), for the costs of any such additional actions.

79. Notwithstanding any provision of this Order, the United States hereby retains all of its information gathering, inspection and enforcement authorities and rights under CERCLA, RCRA and any other applicable statutes or regulations.

80. Nothing in this Order shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person for any liability it may have arising out of or relating in any way to the Site.

81. If a court issues an order that invalidates any provision of this Order or finds that Respondents have sufficient cause not to comply with one or more provisions of this Order, Respondents shall remain bound to comply with all provisions of this Order not invalidated by the court's order.

XXII. ACCESS TO ADMINISTRATIVE RECORD

82. The Section 106 Administrative Record is available for review on normal business days between the hours of 9:00 a.m. and 5:00 p.m. at the U.S. EPA, Region V, 77 West Jackson Boulevard Chicago, Illinois. An Index of the Administrative Record is attached hereto as Attachment 3.

XXIII. EFFECTIVE DATE AND TERMINATION

83. This Order shall become effective thirty (30) days after the date of issuance.

84. Within thirty (30) days after Respondents conclude that all phases of the work have been fully performed, that the performance standards have been attained, and that all operation and maintenance activities have been completed, Respondents shall submit to U.S. EPA a written report by a registered professional engineer certifying that the work has been completed in full satisfaction of the requirements of this Order. U.S. EPA shall require such additional activities as may be necessary to complete the work or U.S. EPA may, based upon present knowledge and Respondents' certification to U.S. EPA, issue written notification to Respondents that the work has been completed, as appropriate, in accordance with the procedures set forth in paragraph 42 for Respondents' certification of completion of the remedial action. U.S. EPA's notification shall not limit U.S. EPA's right to perform periodic reviews pursuant to § 121(c) of CERCLA, 42 U.S.C. § 9621(c), or to take or require any action that in the judgment of U.S. EPA is appropriate at the Site, in accordance with 42 U.S.C. §§ 9604, 9606, or 9607. The provisions of this Order shall be deemed to be satisfied when U.S. EPA notifies Respondents in writing that Respondents have demonstrated, to U.S. EPA's satisfaction, that all terms of the Order have been completed. This notice shall not, however, terminate Respondents obligation to comply with section XVII of this Order (record preservation).

XXIV. NOTICE OF INTENT TO COMPLY

85. On or before the effective date of this Order, each Respondent must submit to U.S. EPA a written notice stating its unequivocal intention to comply with all terms of this Order, together with the written notice required by paragraph 65. In the event any Respondent fails to provide said written notice of its

unequivocal intention to comply with this Order on or before the effective date, said Respondent shall be deemed to have refused to comply with this Order. A Respondent which fails to provide timely notice of its intent to comply with this Order shall thereafter have no authority to perform any response action at the Site, pursuant to §§ 104(a) and 122(e)(6) of CERCLA. In the event such a Respondent subsequently changes its decision and desires to acquire authority from U.S. EPA under § § 104(a) and 122(e)(6) of CERCLA to undertake the work described in this Order, said Respondent must provide the notice described in this paragraph 85 to U.S. EPA and receive from U.S. EPA written permission and authority to proceed with work under this Order.

XXV. PENALTIES

86. Each Respondent shall be subject to civil penalties under § 106(b) of CERCLA, 42 U.S.C. § 9606(b), of not more than $25,000 for each day in which said Respondent violates, or fails or refuses to comply with this Order without sufficient cause. In addition, failure to properly provide response action under this Order, or any portion hereof, may result in liability under § 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), for punitive damages in an amount at least equal to, and not more than three times the amount of any costs incurred by the Fund as a result of such failure to take proper action.

XXVI. OPPORTUNITY TO COMMENT AND CONFER

87. On or before the effective date of this Order, each Respondent may submit written comments to U.S. EPA. Respondents asserting a "sufficient cause" defense under § 106(b) of CERCLA shall describe the nature of the any "sufficient cause" defense using facts that exist on or prior to the effective date of this Order. The absence of a response by U.S. EPA shall not be deemed to be acceptance of Respondent's assertions.

88. Within ten (10) days after the date of issuance of this Order,

Respondents may request a conference with the U.S. EPA to discuss this Order. If requested, the conference shall occur within 20 (twenty) days of the date of issuance of this Order, at the office of U.S. EPA, Region 5, in Chicago, Illinois.

89. The purpose and scope of the conference shall be limited to issues involving the implementation of the response actions required by this Order and the extent to which Respondents intends to comply with this Order. This conference is not an evidentiary hearing and does not constitute a proceeding to challenge this Order. It does not give Respondents a right to seek review of this Order or to seek resolution of potential liability. No record of the conference (e.g. stenographic, tape or other physical record) will be made. At any conference held pursuant to Respondents' request, Respondents may appear in person or by an attorney or other representative. Requests for a conference must be by telephone followed by written confirmation to U.S. EPA's RPM.

ADMINISTRATIVE ORDER FOR REMEDIAL DESIGN AND REMEDIAL ACTION AT ALBION-SHERIDAN TOWNSHIP LANDFILL SITE

So Ordered, this 11th day of Oct., 1995.

BY: Wm. E. Muno
Director, Superfund Division
U.S. Environmental Protection Agency, Region V

LIST OF ATTACHMENTS

Attachment 1	Record of Decision
Attachment 2	Respondents
Attachment 3	Section 106 Administrative Record
Attachment 4	Section 106 Liability File Index
Attachment 5	Statement of Work

B

ALBION-SHERIDAN SITE
ACCESS AGREEMENT

This Access Agreement ("Agreement") is made and entered into on this ____ day of _____, 1998, by and among Cooper Industries, Inc. ("Cooper"), Corning Incorporated ("Corning"), Decker Manufacturing Corp. ("Decker") and Decker's wholly-owned subsidiary, C.D.C Associates, Inc. (Decker and C.D.C Associates, Inc. are hereinafter referred to collectively as "Decker"), each of them acting herein by and through their respective duly authorized officer or representative. Corning, Cooper, and Decker, are hereinafter sometimes collectively referred to as the "Parties" or individually as a "Party."

WHEREAS, in correspondence dated June 6, 1995, the United States Environmental Protection Agency ("EPA") notified the Parties and others that they were potentially responsible parties ("PRPs") at that certain property in Calhoun County, Michigan, defined as the Site in paragraph 1.1 below, which is now listed as the Albion-Sheridan Township Landfill Superfund Site ("Site") on the National Priorities List (listed October 4, 1989, at 54 Federal Register 41000, 41021); and

WHEREAS, the EPA issued a Unilateral Administrative Order ("UAO") effective December 11, 1995, to the Parties and the City of Albion, ordering the Respondents to perform the Remedial Design and Remedial Action required by the Record of Decision executed by EPA on March 28, 1995.

WHEREAS, without admitting any fact, responsibility or liability, each of the Parties, but not the City of Albion, has notified the EPA of its intent to comply with the UAO and each Party claims to have incurred response costs in connection with the UAO;

WHEREAS, in the absence of an internal cost allocation agreement among the Parties, Cooper and Corning have independently selected a Project Coordinator to serve as the environmental consultant to oversee the performance of the UAO-related work, and who, according to Cooper and Corning, has provided labor, materials, tools, supervision and equipment, and performed and/or overseen certain aspects of the work required by the UAO;

WHEREAS, Decker has purchased the properties adjacent to the Site formerly owned by Gill and Prater ("the Adjacent Properties") to which access is required in order to complete the work required by the UAO;

WHEREAS, each Party has filed claims in connection with the response costs it claims to have incurred in the lawsuit entitled United States of America v City of Albion, Case No. 1:97-CV-1037, which is pending in the United States District Court

for the Western District of Michigan ("the Lawsuit"), with each Party denying liability for the claims made against it;

WHEREAS, despite the Lawsuit and their inability to agree to a mutually acceptable method of allocating among themselves the common legal, technical, administrative and other costs incurred and to be incurred in connection performing the work required by the UAO, the Parties wish to cooperate among themselves in performing such work;

WHEREAS, Cooper and Corning have advised Decker that the Project Coordinator now requires access to the Adjacent Properties in order to implement the work required by the UAO;

WHEREAS, Decker wishes to provide the necessary access to the Adjacent Properties, consistent with this Agreement;

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

1. **DEFINITIONS.**

1.1 Albion-Sheridan (the "Site") as used herein shall mean the real property located at 29975 East Erie Road, approximately one mile east of the City of Albion, Sheridan Township, Calhoun County, Michigan. The inactive landfill covers approximately 18 acres and is situated between Michigan Avenue and East Erie Road, and is bordered on the east by the Calhoun/Jackson County line. The north branch of the Kalamazoo River is approximately 400 feet south of the site. More detailed information concerning the geographic location is available in the ROD.

1.2. The capitalized terms used and not otherwise defined herein shall have the respective meanings they are given in the UAO.

2. **REPORTING REQUIREMENTS.** Cooper and Corning shall require the Project Coordinator to provide Decker with a copy of the 1) all work plans and reports required to be prepared by the UAO, 2) all other materials furnished to the EPA prior to the time such item(s) are provided to the EPA, and 3) all correspondence to or from the Project Coordinator involving the Site. If the EPA does not approve a plan or report, and the Project Coordinator submits a revised plan or report to the EPA, the Project Coordinator shall send a copy of the revised plan or report to Decker prior to the time such revised item(s) are provided to the EPA.

3. **SITE ACCESS.**

3.1 Scope of Access. Decker consents to officers, employees, and representatives of the Project Coordinator or any other environmental consultant, contractor, and any person or entity under the Project Coordinator's control or

supervision, entering and having access to the Adjacent Properties for the purpose of performing the work required by the UAO and taking any other action necessary to carry out this work, subject to the other terms of this Agreement. The Project Coordinator shall only perform UAO-related activities that require access after giving prior notice to Decker and only at reasonable times agreeable to Decker, such agreement shall not be unreasonably withheld. Neither the Project Coordinator, Cooper, Corning, nor any representatives of Cooper or Corning shall conduct activities at the Site that are not necessary to perform the UAO-related work. The access granted by this Agreement does not include the right to remove soils from the Adjacent Properties for placement on the Site as part of the required landfill cap or to intentionally alter the Adjacent Properties in a material way (other than by extending a portion of the proposed landfill cap onto the Adjacent Properties), unless otherwise agreed in writing.

3.2 Governmental Access. Decker also consents to representatives of EPA, its contractors and oversight officials, State of Michigan, and its contractors having access to the Adjacent Property to the extent required by the UAO.

3.3 Not EPA Representatives. Neither Cooper, Corning, nor Decker is a representative of the EPA with respect to liability associated with the Site activities.

3.4 Indemnification. Cooper and Corning, jointly and severally, shall defend, indemnify, and hold harmless Decker from any and all losses, claims, liabilities, expenses, and costs, including attorney fees (collectively "Liabilities"), arising directly or indirectly from the work performed on the Adjacent Properties pursuant to this Agreement or the exercise of the rights herein granted, to the extent such Liabilities arise from any negligent act or omission of Cooper, Corning, the Project Coordinator, their employees, representatives or agents, including any other environmental consultant, contractor, and any person or entity under the Project Coordinator's control or supervision.

3.5 Insurance. Cooper and Corning shall provide Decker with appropriate certificates of insurance demonstrating that the Project Coordinator and/or any other consultant or contractor working on the Adjacent Properties has obtained workman's compensation, comprehensive general liability, and professional liability insurance in place to cover the work performed regarding the Site and shall insure that such insurance is maintained throughout the course of the project. Cooper and Corning shall also have C.D.C. Associates, Inc. and Decker named as additional insureds under any such comprehensive general liability insurance policy.

3.6 Termination. The access granted by this Agreement shall terminate

upon EPA's issuance of written notification that the work required by the UAO has been completed consistent with paragraphs 42 and 84 of the UAO.

3.7 Utility Hookups. The Project Coordinator shall be responsible for complying with the requirements of all local governmental authorities and applicable utilities in connection with any utility hookups.

4. **NO INTERFERENCE WITH THE WORK.** Each Party agrees to reasonably cooperate with the Project Coordinator as to allow the Project Coordinator to perform and complete the requirements of the UAO.

5. **SUBSEQUENT AGREEMENT.** To the extent the Parties reach agreement regarding the equitable allocation of costs among themselves, this Agreement shall be conformed accordingly when an agreement on allocation is reached.

6. **CONFIDENTIALITY.** The Parties agree and acknowledge that except as otherwise provided herein, this Agreement and all documents and instruments created in connection herewith, except any document required to be produced pursuant to the UAO, are deemed confidential. The Parties agree to keep all such information strictly secret and confidential and not to reveal, divulge or disclose any such information or terms hereof to any third party, except 1) as may be required in connection with any court proceeding, including the Lawsuit, in which event the party required to make disclosure shall furnish advance notice thereof to all other parties to this Agreement in accordance with paragraph __ hereof, 2) in connection with any dispute involving the terms hereof, or 3) upon the written agreement of all the parties hereto. As used in this paragraph, insurers of the Parties are not considered third parties.

7. **SCOPE OF AGREEMENT.** The terms of this Agreement pertain only to the work as described in section 3.1 herein. However, this Agreement does constitute the entire agreement of the Parties hereto with regard to that work. Except as referenced elsewhere in this Agreement, there are no other agreements, oral or written, between the Parties regarding that work and this Agreement can be amended only by written agreement signed by the Parties hereto and by reference made a part hereof.

8. **EFFECT OF AGREEMENT.** Cooper and Corning acknowledge that Decker has incurred certain response costs in obtaining the access to the Adjacent Properties required to complete the work required by the UAO and that these costs were incurred consistent with the UAO, the EPA's instructions, and the relevant state

and federal rules and regulations regarding the incurrence of response costs. Cooper and Corning agree not to assert otherwise in the lawsuit.

9. **DENIAL OF LIABILITY.** Except as otherwise provided herein, this Agreement shall not under any circumstances constitute or be constructed as an admission of liability, law or fact, a release or waiver of any right or defense, nor an estoppel against any Party as among themselves or by any other person not a Party. This Agreement shall not constitute or be used as evidence of any admission by the Parties, nor be admissible in any proceeding except in an action to seek enforcement of any of the terms herein.

10. **NOTICE.** Any notice, communication, request, reply or advice (severally or collectively referred to as "Notice") in this Agreement provided or permitted to be given, made or accepted by any party to any other party must be in writing. Notice may, unless otherwise provided herein, be given or served 1) by depositing same in United States mail, postage paid, certified mail, and addressed to the party to be notified, with return receipt requested, 2) by overnight courier or be addressed to the party to be notified, 3) by delivering the same to such party, or agent of such party, or 4) when appropriate, by sending a facsimile, electronic mail, telecopy, telegram or wire addressed to the party to be notified. Notice deposited in the mail in the matter herein above described shall be effective from and after such deposit.

11. **TIME.** Time is of the essence in all things pertaining to the performance of this Agreement. In this regard, the Project Coordinator will perform all actions as expeditiously as reasonable and possible.

12. **EFFECTIVE DATE.** The effective date ("Effective Date") of this Agreement shall be the date of execution of this Agreement by the last party signing as shown below. This Agreement may be signed and acknowledged in any number of counterparts, each one of which shall be considered an original and all of which shall collectively comprise the same agreement.

COOPER INDUSTRIES, INC.

By: _____

Title: _____

Dated: _____

CORNING INCORPORATED

By: _____

Title: _____

Dated: _____

DECKER MANUFACTURING CORP.

By: _____

Title: _____

Dated: _____

C.D.C. ASSOCIATES, INC.

By: _____

Title: _____

Dated: _____

C

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. DECKER MANUFACTURING CORPORATION, Defendant.	Civil Action No. 1:98cv404

CONSENT DECREE

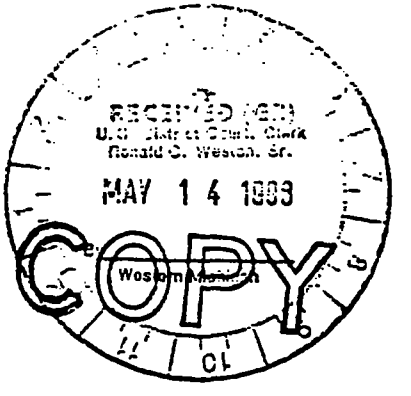


TABLE OF CONTENTS

I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607, as amended ("CERCLA"), seeking reimbursement of response costs incurred and to be incurred for response actions taken at or in connection with the release or threatened release of hazardous substances at the Albion-Sheridan Township Landfill Superfund Site, located at 29975 East Erie Road, Sheridan Township, Calhoun County, Michigan ("the Site").

B. The Defendant, Decker Manufacturing Corporation, that has entered into this Consent Decree ("Settling Defendant") does not admit any liability to Plaintiff arising out of the transactions or occurrences alleged in the complaint.

C. On October 11, 1995, U.S. EPA issued an Administrative Order, Docket No. V-W-96-C-316, to potentially responsible parties at the Site, including the Settling Defendant. The United States takes no position herein regarding the adequacy of Settling Defendant's response to the Administrative Order.

D. The United States and Settling Defendant agree, and this

Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED, AND DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b) and also has personal jurisdiction over Settling Defendant. Settling Defendant consents to and shall not challenge entry of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree is binding upon the United States, and upon Settling Defendant and its successors and assigns. Any change in ownership or corporate or other legal status, including but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Defendant under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq.

b. "Consent Decree" shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, the Consent Decree shall control.

c. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

d. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.

e. "EPA" shall mean the United States Environmental

Protection Agency and any successor departments, agencies or instrumentalities of the United States.

f. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

g. "Interest" shall mean interest at the current rate specified for interest on investments of the Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).

h. "Paragraph" shall mean a portion of this Consent Decree identified by an arabic numeral or an upper or lower case letter.

i. "Parties" shall mean the United States and the Settling Defendant.

j. "Past Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that EPA or DOJ on behalf of EPA has paid at or in connection with the Site through the date of lodging of this Consent Decree, and all Interest on all such costs.

k. "Plaintiff" shall mean the United States of America.

l. "Section" shall mean a portion of this Consent

Decree identified by a roman numeral.

m. "Settling Defendant" shall mean the Decker Manufacturing Corporation, a corporation duly incorporated in the State of Michigan with its principle place of business located at 703 North Clark Street, Albion, Michigan.

n. "Site" shall mean the Albion-Sheridan Township Landfill Superfund site, encompassing approximately 18 acres of a 30 acre parcel, located between Michigan Avenue and East Erie Road, and bordered on the east by the Calhoun/Jackson County line in Sheridan Township, Calhoun County, Michigan, and depicted more clearly on the map included in Appendix A.

o. "United States" shall mean the United States of America, including it departments, agencies and instrumentalities.

V. REIMBURSEMENT OF RESPONSE COSTS

4. Payment of Past Response Costs to the EPA Hazardous Substance Superfund. Within 30 days of entry of this Consent Decree, Settling Defendant shall pay to the EPA Hazardous Substance Superfund $250,000 in reimbursement of Past Response Costs, plus an additional sum for Interest on that amount calculated from the date of lodging of this Consent Decree through the date of payment. Payment shall be made by FedWire

Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, referencing USAO File Number _____, the EPA Region and Site Spill ID Number 05AN, and DOJ Case Number 90-11-2-1109. Payment shall be made in accordance with instructions provided to Settling Defendant by the Financial Litigation Unit of the U.S. Attorney's Office in the Western District of Michigan, Southern Division, following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 p.m. Eastern Time shall be credited on the next business day. Settling Defendant shall send notice to EPA and DOJ that payment has been made in accordance with Section XI (Notices and Submissions) and to:

Regional Financial Management Officer
U.S. Environmental Protection Agency — Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

VI. FAILURE TO COMPLY WITH REQUIREMENTS OF CONSENT DECREE

5. Interest on Late Payments. In the event that any payment required by Section V (Reimbursement of Response Costs) or Section VI, Paragraph 6 (Stipulated Penalty), is not received when due, Interest shall continue to accrue on the unpaid balance through the date of payment.

6. Stipulated Penalty.

a. If any amounts due to EPA under this Consent Decree are not paid by the required date, Settling Defendant shall pay to EPA as a stipulated penalty, in addition to the Interest required by Paragraph 5, $1000 per violation per day that such payment is late.

b. Stipulated penalties are due and payable within 30 days of the date of the demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund" and shall be sent to:

U.S. Environmental Protection Agency — Region 5
Attn: Superfund Accounting
Post Office Box 70753
Chicago, Illinois 60604

All payments shall indicate that the payment is for stipulated penalties and shall reference the name and address of the party making payment, the EPA Region and Site Spill ID Number 05AN, USAO File Number _____, and DOJ Case Number 90-11-2-1109. Copies of check[s] paid pursuant to this Paragraph, and any accompanying transmittal letter[s], shall be sent to EPA and DOJ as provided in Section XI (Notices and Submissions) and to

Regional Financial Management Officer
U.S. Environmental Protection Agency — Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

c. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Defendant of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

7. If the United States brings an action to enforce this Consent Decree, Settling Defendant shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

8. Payments made under Paragraphs 5-7 shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of Settling Defendant's failure to comply with the requirements of this Consent Decree.

9. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment

of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree.

VII. COVENANT NOT TO SUE BY PLAINTIFF

10. Covenant Not to Sue by United States. Except as specifically provided in Paragraph 11 (Reservation of Rights by United States), the United States covenants not to sue Settling Defendant pursuant to Sections 106(b) and 107(c)(3) of CERCLA, 42 U.S.C. §§ 9606(b) and 9607(c)(3), for civil penalties and punitive damages for potential violations of the EPA Administrative Order Docket No. V-W-96-C-316 through November 12, 1997, and pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Past Response Costs in connection with the Site. This covenant not to sue shall take effect upon receipt by EPA of all payments required by Section V, Paragraph 4 (Payment of Past Response Costs to the United States) and Section VI, Paragraphs 5 (Interest on Late Payments) and 6(a) (Stipulated Penalty for Late Payment). This covenant not to sue is conditioned upon the satisfactory performance by Settling Defendant of its obligations under this Consent Decree. This covenant not to sue extends only to Settling Defendant and does not extend to any other person. The above covenant not to sue (and reservations of rights thereto) shall also apply to Settling

Defendant's officers, directors, and employees, successors, and assigns, but only to the extent that the alleged liability of the officer, director, employee, successor or assign is based on its status and in its capacity as an officer, director, employee, successor, or assign of Settling Defendant, and not to the extent that the alleged liability arose independently of the alleged liability of the Settling Defendant.

11. Reservation of Rights by United States. The covenant not to sue set forth in Paragraph 10 does not pertain to any matters other than those expressly specified therein. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all other matters, including but not limited to:

a. liability for failure of Settling Defendant to meet a requirement of this Consent Decree;

b. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

c. criminal liability;

d. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606; and

e. liability for costs incurred or to be incurred by the United States that are not within the definition of Past Response Costs.

VIII. COVENANT NOT TO SUE BY SETTLING DEFENDANT

12. Settling Defendant covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to Past Response Costs or this Consent Decree, or with respect to response costs it has incurred or will incur to comply with the EPA Administrative Order Docket No. V-W-96-C-316, including but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at the Site for which the Past Response Costs were incurred; and

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Past Response Costs.

13. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the

meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

IX. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

14. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

15. The Parties agree, and by entering this Consent Decree this Court finds, that Settling Defendant are entitled, as of the effective date of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree are Past Response Costs. The parties agree, and by entering this Consent Decree, the Court finds, that any such protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for "matters addressed" in this Consent Decree shall also apply to Settling

Defendant's officers, directors, and employees, successors, and assigns, but only to the extent that the alleged liability of the officer, director, employee, successor, or assign is based on its status and in its capacity as an officer, director, employee, successor, or assign of Settling Defendant, and not to the extent that the alleged liability arose independently of the alleged liability of the Settling Defendant.

16. Settling Defendant agrees that, with respect to any suit or claim for contribution brought by it for matters related to this Consent Decree (other than counterclaims and crossclaims brought by Settling Defendant in an action initiated by others), it will notify EPA and DOJ in writing no later than 45 days prior to the initiation of such suit or claim. Settling Defendant also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Consent Decree, it will notify EPA and DOJ in writing within 15 days of service of the complaint or claim upon it, and at that time, will advise the EPA and DOJ whether Settling Defendant intends to file and counterclaims or crossclaims related to this Consent Decree. In addition, Settling Defendant shall notify EPA and DOJ within 15 days of service or receipt of any Motion for Summary Judgment, and within 15 days of receipt of any order from a court setting a

case for trial, for matters related to this Consent Decree.

17. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by Plaintiff set forth in Section VII.

X. CERTIFICATION OF SETTLING DEFENDANT

18. By signing this Consent Decree, Settling Defendant certifies that, to the best of its knowledge and belief, it has:

a. conducted a thorough, comprehensive, good faith search for documents, and has fully and accurately disclosed to EPA, all information currently in its possession, or in the possession of its officers, directors, employees, contractors or agents, which relates in any way to the ownership, operation or control of the Site, or to the ownership, possession, generation, treatment, transportation, storage or disposal of a hazardous

substance, pollutant or contaminant at or in connection with the Site;

b. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to its potential liability regarding the Site, after notification of potential liability or the filing of a suit against the Settling Defendant regarding the Site; and

c. fully complied with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e).

XI. NOTICES AND SUBMISSIONS

19. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, DOJ, and Settling Defendant, respectively.

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
Post Office Box 7611
Ben Franklin Station
Washington, D.C. 20044-7611
DJ# 90-11-2-1109

As to EPA:

Kathleen K. Schnieders
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency — Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Jon Peterson
Remedial Project Manager
Superfund Division
U.S. Environmental Protection Agency — Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

As to Settling Defendant:

Michael Caldwell
Fink Zausmer
31700 Middlebelt Road
Suite 150
Farmington Hills, Michigan 48334-0100

XII. RETENTION OF JURISDICTION

20. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XIII. INTEGRATION/APPENDICES

21. This Consent Decree and its appendices constitute the

final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendix is attached to and incorporated into this Consent Decree: "Appendix A" is the map of the Site.

XIV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

22. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendant consents to the entry of this Consent Decree without further notice.

23. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XV. EFFECTIVE DATE

24. The effective date of this Consent Decree shall be the date upon which it is entered by the Court.

XVI. SIGNATORIES/SERVICE

25. The undersigned representative of the Settling Defendant to this Consent Decree and the Chief, Environmental Enforcement Section of the Environment and Natural Resources Division of the United States Department of Justice certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

26. Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Defendant in writing that it no longer supports entry of the Consent Decree.

27. Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on its behalf with respect to all matters arising under or relating to this Consent Decree. Settling Defendant hereby agrees to accept service in that manner and to waive the formal service

requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons.

SO ORDERED THIS _____ DAY OF _____, 19__.

_____
United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Decker Manufacturing Corp., Civ. No. (W.D. Mich.) relating to the Albion-Sheridan Township Landfill Superfund Site.

FOR THE UNITED STATES OF AMERICA:

Date: 5/8/98

Bruce S. Gelber
Deputy Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

Michael H. Dettmer
United States Attorney
Western District of Michigan

Date: 5/14/98

W. Francesca Ferguson
Assistant United States Attorney
Western District of Michigan
333 Ionia Avenue, N.W.
Suite 501
Grand Rapids, Michigan 49503
(616) 456-2404

Date: 5/8/98

Francis J. Biros
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044-7611
(202) 616-6552

THE UNDERSIGNED PARTIES enter into this consent Decree in the matter of United States v. Decker Manufacturing Corp., Civ. No. (W.D. Mich.) relating to the Albion-Sheridan Township Landfill Superfund Site.

FOR THE U. S. ENVIRONMENTAL PROTECTION AGENCY:

Date: 4/20/98

William E. Muno
Director, Superfund Division,
Region 5
U.S. Environmental Protection
Agency
77 West Jackson Boulevard
Chicago, Illinois 60604

Kathleen K. Schnieders
Assistant Regional Counsel
U.S. Environmental Protection
Agency
77 West Jackson Boulevard
Chicago, Illinois 60604

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Decker Manufacturing Corp., Civ. No. (W.D. Mich.) relating to the Albion-Sheridan Township Landfill Superfund Site.

FOR DEFENDANT DECKER MANUFACTURING CORPORATION

Date: 3-17-98 Bernard J. Kubala

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Philip M. Moilanen

Title: Attorney

Address: Bullen, Moilanen, Klaasen & Swan, P.C.
402 Brown Street
Jackson, MI 49203-1426

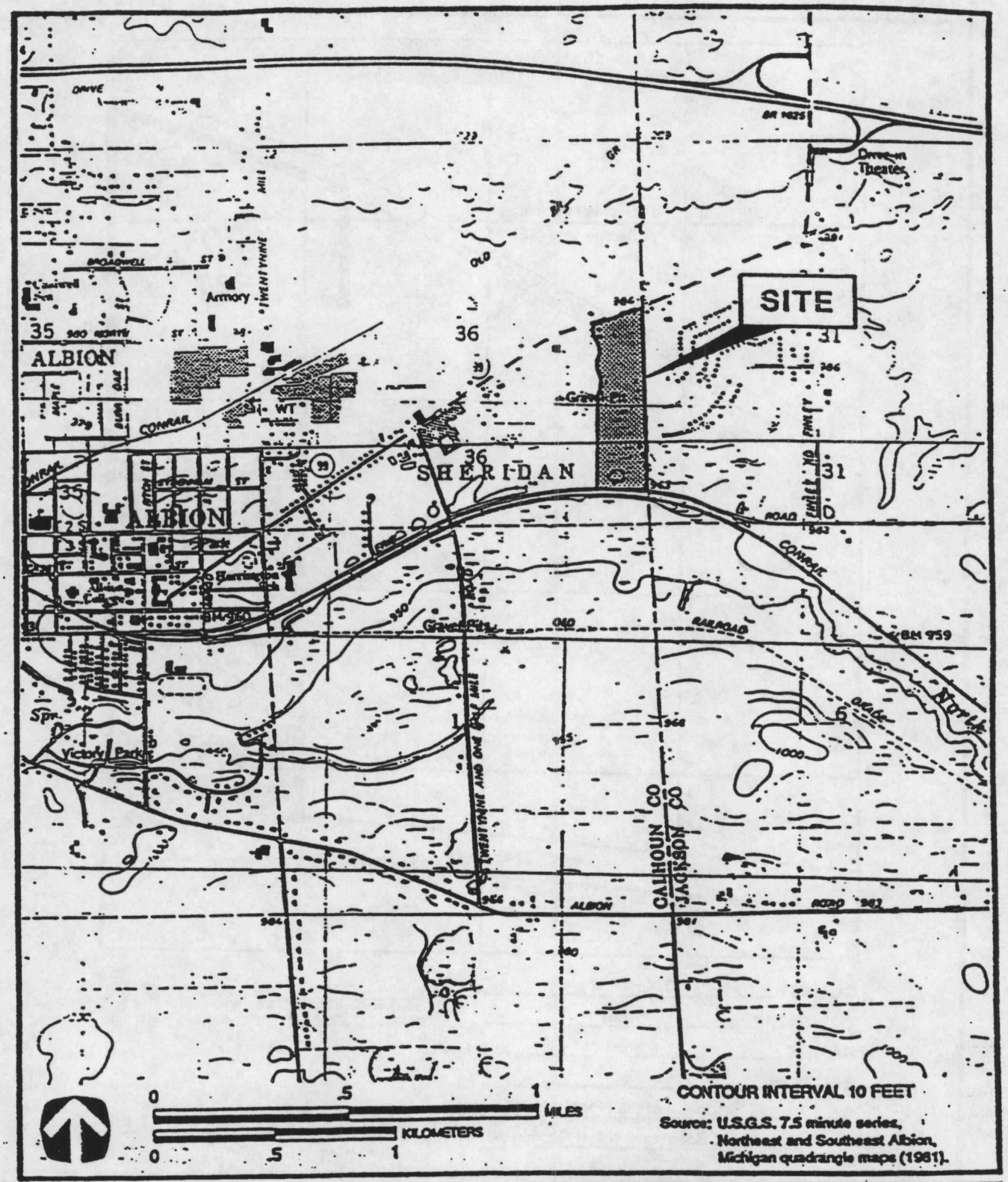


Figure 2. Topographic map of the Albion-Sheridan Township landfill, Calhoun County, Michigan.

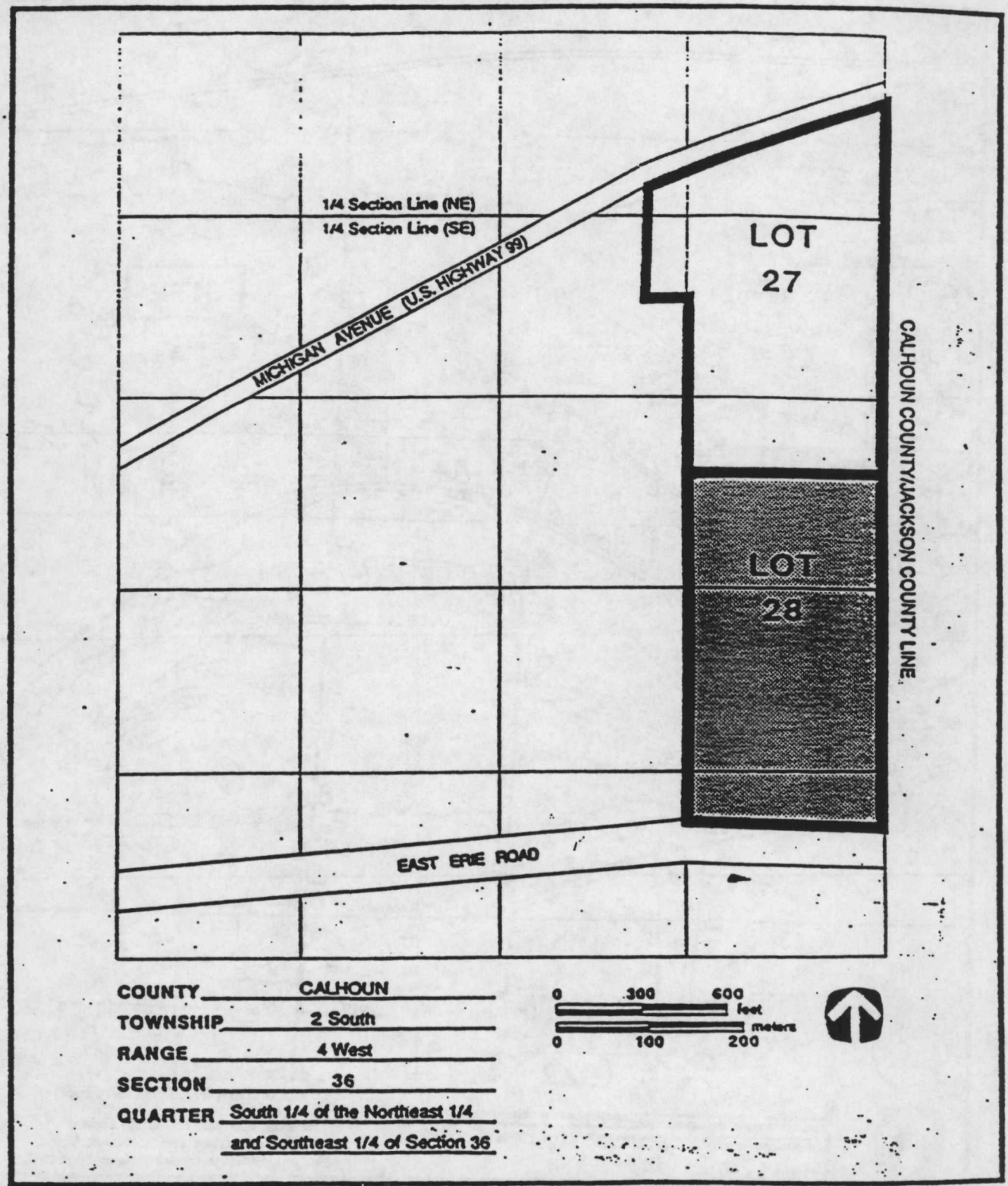


Figure 4. Lot 28, as purchased in 1953 by Gordon and Marguerite Stevick.

D

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. DECKER MANUFACTURING CORPORATION, Defendant.	CIVIL ACTION No. 1:98cv409

COMPLAINT

Plaintiff, the United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the United States Environmental Protection Agency ("U.S. EPA"), alleges as follows:

NATURE OF THE ACTION

1. This is a civil action for recovery of response costs from named defendant pursuant to Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9607, for unreimbursed costs incurred by the United States in responding to releases or threatened releases of hazardous substances at the Albion-Sheridan Township Landfill Site (the "Site"), located at 29975 East Erie Road in Sheridan Township, Calhoun County, Michigan. The United States also seeks, pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), a declaration of defendant's liability for all future response costs to be incurred by the United States in connection with the Site.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action and the parties hereto, pursuant to Sections 107(a), 106(a) and 113(b) of CERCLA, 42 U.S.C. §§ 9607(a), 9606(a) and 9613(b), and 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) and Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), because the releases or threatened releases of hazardous substances that gave rise to the claims in this action occurred in this district and because the Site is located in this district.

THE DEFENDANT

4. Defendant Decker Manufacturing Corporation is a corporation duly incorporated in the State of Michigan with its principal place of business located at 703 North Clark Street, Albion, Michigan, and is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

THE ALBION-SHERIDAN TOWNSHIP LANDFILL SITE

5. Between 1966 and 1981, the Albion-Sheridan Township Landfill Site was operated as a landfill for the disposal of municipal and industrial wastes from residents and industries of the City of Albion and surrounding communities.

6. The City of Albion, Michigan contracted with the Site owner to operate the Albion-Sheridan Landfill Site and "to provide and maintain a waste yard for the use of the City of Albion residents and industries subject to such regulations for use as the City Council may prescribe," beginning in 1966 and continuing until it was closed in 1981.

7. Pursuant to the City of Albion's contract with the

landfill owner, the City of Albion paid the landfill owner for maintaining the Site as a waste yard for City of Albion residents and industries.

8. The City of Albion maintained control over and had responsibility for the use of the Site by, without limitation, setting hours of operation, dictating rates for users of the Site, approving compensation for the Site owner, and accepting fees from users of the Site.

9. During its period of operation, industrial wastes were disposed of at the Albion-Sheridan Landfill by industries in the City of Albion area including, but not limited to, Decker Manufacturing Corporation.

10. Beginning in 1986, U.S. EPA has engaged in investigations, studies, and monitoring of releases and threatened releases of hazardous substances at the Site pursuant to Section 104(b) of CERCLA, 42 U.S.C. § 9604(b), including a remedial investigation and feasibility study of the Site and underlying groundwater.

11. The remedial investigation and feasibility study conducted by U.S. EPA resulted in the selection of a remedial action for the cleanup of the Site pursuant to the National Contingency Plan, promulgated under Section 105(a) of CERCLA, 42 U.S.C. § 9605(a), and codified at 40 C.F.R. Part 300 et seq.

12. U.S. EPA's investigations determined that metal plating sludges, including heavy metals, liquid industrial wastes, including waste sludges and oils, paint wastes and thinners, oil and grease, fly ash and casting sand were disposed of at the Site.

13. The results of U.S. EPA's remedial investigation

showed the presence of volatile organic compounds, including, but not limited to, 1,2,4-trimethyl benzene, acetone and xylene, and the presence of inorganic contaminants, including, but not limited to, arsenic, chromium, lead and zinc, in the subsurface soils, leachate and groundwater at the Site.

14. Hazardous substances within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and 40 C.F.R. § 302.1 et seq., were spilled, leaked, discharged, or otherwise disposed of at the Site.

15. The migration of hazardous substances into the soil and groundwater at and around the Site, and the presence of hazardous substances at the Site, constitute releases and threatened releases of hazardous substances within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

16. On October 4, 1989, U.S. EPA placed the Site on the National Priorities List, 40 C.F.R. Part 300, Appendix B, which is a national list of priorities for response action under CERCLA, based upon relative risk of danger to public health or welfare or the environment. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, U.S. EPA published the listing of the Site at 54 Fed. Reg. 41000, 41021 (October 4, 1989).

CLAIM FOR RELIEF

17. The allegations contained in paragraphs 1 - 16 are realleged and incorporated herein by reference.

18. The Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

19. Defendant Decker Manufacturing Corporation arranged for the disposal, or arranged with a transporter for disposal, at the Site, of hazardous substances including waste oil and waste oil

sludge that it owned or possessed, within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

20. There have been releases, or threatened releases, of hazardous substances into the environment at or from the Site within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

21. The actions taken by the United States in connection with the releases, or threatened releases, of hazardous substances at the Site constitute "response" actions within the meaning of Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), for which the United States has incurred, and will continue to incur costs.

22. The costs incurred by the United States in connection with the Site were not inconsistent with the National Contingency Plan, promulgated under Section 105(a) of CERCLA, 42 U.S.C. § 9605(a), and codified at 40 C.F.R. Part 300 et seq.

23. As of January 31, 1997, the United States has incurred unreimbursed response costs in connection with the Site in excess of $900,000. The United States will continue to incur costs in connection with the Site.

24. To date, the defendant has failed to reimburse the United States for any of the response costs incurred in connection with the Site.

25. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), the defendant is jointly and severally liable to the United States for all response costs incurred and to be incurred by the United States in connection with the Site, including enforcement costs and prejudgment interest on such costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States of America, respectfully requests that this Court:

1. Enter judgment in favor of the United States and against defendant, jointly and severally, for all costs incurred by the United States, including prejudgment interest, for response actions in connection with the Site;

2. Enter a declaratory judgment, pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), that defendant is jointly and severally liable for all future response costs incurred by the United States for response actions in connection with the Site; and

3. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

BRUCE S. GELBER
Deputy Chief, Environmental
Enforcement Section
Environment and Natural Resources
Division
United States Department of Justice

MICHAEL H. DETTMER
United States Attorney
Western District of Michigan

W. FRANCESCA FERGUSON
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FRANCIS J. BIROS
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Environmental Enforcement Section
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OF COUNSEL:

KATHLEEN K. SCHNIEDERS
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region V
77 West Jackson Boulevard
Chicago, Illinois 60604
(312) 353-8912

E

U.S. C.

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

CITY OF ALBION, MICHIGAN,

Defendant.

CIVIL ACTION NO. 1:97cv1037

David W. McKeague
U.S. District Judge

97 DEC 11 PM 3:53

COMPLAINT

Plaintiff, the United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the United States Environmental Protection Agency ("U.S. EPA"), alleges as follows:

NATURE OF THE ACTION

1. This is a civil action pursuant to Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9607, for recovery from named defendant of the unreimbursed response costs incurred by the United States in responding to releases or threatened releases of hazardous substances at the Albion-Sheridan Township Landfill Site (the "Site"), located at 29975 East Erie Road in Sheridan Township, Calhoun County, Michigan. The United States also seeks, pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), a declaration of defendant's liability for all future response costs to be incurred by the United States in connection with the Site. The United States further seeks civil penalties against defendant City of Albion pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606, for failure

of the City of Albion to comply with an administrative order issued by U.S. EPA.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action and the parties hereto, pursuant to Sections 107(a), 106(a) and 113(b) of CERCLA, 42 U.S.C. §§ 9607(a), 9606(a) and 9613(b), and 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) and Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), because the releases or threatened releases of hazardous substances that gave rise to the claims in this action occurred in this district and because the Site is located in this district.

THE DEFENDANT

4. Defendant City of Albion is a municipality located in the State of Michigan and is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

THE ALBION-SHERIDAN TOWNSHIP LANDFILL SITE

5. Between 1966 and 1981, the Albion-Sheridan Township Landfill Site was operated as a landfill for the disposal of municipal and industrial wastes from residents and industries of the City of Albion and surrounding communities.

6. The City of Albion contracted with the Site owner to operate the Albion-Sheridan Landfill Site and "to provide and maintain a waste yard for the use of the City of Albion residents and industries subject to such regulations for use as the City Council may prescribe," beginning in 1966 and continuing until it was closed in 1981.

7. Pursuant to the City of Albion's contract with the

landfill owner, the City of Albion paid the landfill owner for maintaining the Site as a waste yard for City of Albion residents and industries.

8. The City of Albion maintained control over and had responsibility for the use of the Site by, without limitation, setting hours of operation, dictating rates for users of the Site, approving compensation for the Site owner, and accepting fees from users of the Site.

9. During its period of operation, industrial wastes were disposed of at the Albion-Sheridan Landfill by industries in the City of Albion area.

10. Beginning in 1986, U.S. EPA engaged in investigations, studies, and monitoring of releases and threatened releases of hazardous substances at the Site pursuant to Section 104(b) of CERCLA, 42 U.S.C. § 9604(b), including a remedial investigation and feasibility study of the Site and underlying groundwater, and will continue monitoring implementation of the remedial design and remedial action at the Site.

11. The remedial investigation and feasibility study conducted by U.S. EPA resulted in the selection of a remedial action for the cleanup of the Site pursuant to the National Contingency Plan, promulgated under Section 105(a) of CERCLA, 42 U.S.C. § 9605(a), and codified at 40 C.F.R. Part 300 et seq.

12. U.S. EPA's investigations determined that metal plating sludges, including heavy metals, liquid industrial wastes, including waste sludges and oils, paint wastes and thinners, oil and grease, fly ash and casting sand were disposed of at the Site.

13. The results of U.S. EPA's remedial investigation showed the presence of volatile organic compounds, including, but not limited to, 1,2,4-trimethyl benzene, acetone and xylene, and the presence of inorganic contaminants, including, but not limited to, arsenic, chromium, lead and zinc, in the subsurface soils, leachate and groundwater at the Site.

14. Hazardous substances within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and 40 C.F.R. § 302.1 et seq., were spilled, leaked, discharged, or otherwise disposed of at the Site.

15. The migration of hazardous substances into the soil and groundwater at and around the Site, and the presence of hazardous substances at the Site, constitute releases and threatened releases of hazardous substances within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

16. On October 4, 1989, U.S. EPA placed the Site on the National Priorities List, 40 C.F.R. Part 300, Appendix B, which is a national list of priorities for response action under CERCLA, based upon relative risk of danger to public health or welfare or the environment. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, U.S. EPA published the listing of the Site at 54 Fed. Reg. 41000, 41021 (October 4, 1989).

FIRST CLAIM FOR RELIEF

17. The allegations contained in paragraphs 1 - 16 are realleged and incorporated herein by reference.

18. The Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

19. Defendant City of Albion operated the Site at the time of disposal of hazardous substances, within the meaning of

Sections 101(20) and 107(a)(2) of CERCLA, 42 U.S.C. §§ 9601(20) and 9607(a)(2).

20. There have been releases, or threatened releases, of hazardous substances into the environment at or from the Site within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

21. The actions taken by the United States in connection with the releases, or threatened releases, of hazardous substances at the Site constitute "response" actions within the meaning of Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), for which the United States has incurred, and will continue to incur costs.

22. The costs incurred by the United States in connection with the Site were not inconsistent with the National Contingency Plan, promulgated under Section 105(a) of CERCLA, 42 U.S.C. § 9605(a), and codified at 40 C.F.R. Part 300 et seq.

23. As of January 31, 1997, the United States has incurred unreimbursed response costs in connection with the Site in excess of $750,000. The United States will continue to incur costs in connection with the Site.

24. To date, the defendant has failed to reimburse the United States for any of the response costs incurred in connection with the Site.

25. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), the defendant is jointly and severally liable to the United States for all response costs incurred and to be incurred by the United States in connection with the Site, including enforcement costs and prejudgment interest on such costs.

SECOND CLAIM FOR RELIEF

26. The allegations contained in paragraphs 1 - 25 are realleged and incorporated herein by reference.

27. Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), provides, in pertinent part:

> [W]hen the President determines that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from a facility, . . . [t]he President may. . ., after notice to the affected State, take other action under this section including, but not limited to, issuing such orders as may be necessary to protect public health and welfare and the environment.

28. The President's authority under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), with respect to facilities within the State of Michigan, has been delegated to the Director, Superfund Division, of the U.S. EPA, Region 5.

29. Pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), U.S. EPA issued defendant City of Albion and other respondents an administrative order, Docket No. V-W-96-C-316, on October 11, 1995, requiring defendant City of Albion and other respondents to implement a remedial design and remedial action at the Site. The effective date of the administrative order was November 11, 1995. A true and accurate copy of the administrative order is attached as Exhibit A, and incorporated by reference.

30. The City of Albion failed to comply with the administrative order by failing to provide written notice of intent to implement a remedial design and remedial action at the Site in concert with other respondents as required by the administrative order by its effective date of November 11, 1995. To date, the City of Albion has failed to comply with the

administrative order.

31. Pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606, the City of Albion is liable to the United States for civil penalties up to $25,000 per day for each day of noncompliance with the administrative order issued by U.S. EPA prior to January 30, 1997, and pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606, Pub. L. 104-134 and 61 Fed. Reg. 69360, the City of Albion is liable to the United States for civil penalties up to $27,500 per day for each such day of noncompliance with the administrative order issued by U.S. EPA occurring on or after January 30, 1997.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States of America, respectfully requests that this Court:

1. Enter judgment in favor of the United States and against defendant, jointly and severally, for all costs incurred by the United States, including prejudgment interest, for response actions in connection with the Site;

2. Enter a declaratory judgment, pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), that defendant is jointly and severally liable for all future response costs incurred by the United States for response actions in connection with the Site;

3. Pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606, assess civil penalties against the City of Albion of up to $25,000 per day for each day of noncompliance with the administrative order issued by U.S. EPA prior to January 30, 1997, and pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606, Pub. L. 104-134 and 61 Fed. Reg. 69360, assess civil penalties

against the City of Albion up to $27,500 per day for each such day of noncompliance with the administrative order issued by U.S. EPA occurring on or after January 30, 1997;

4. Award the United States its costs of this action; and

5. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

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CUMULATIVE COST SUMMARY
ALBION-SHERIDAN TOWNSHIP, MI
SUPERFUND SITE # AN
PREPARED 7/16/97

000002

EPA EXPENDITURES	Cumulative Costs from 10/01/80 Thru 2/28/97
EPA PAYROLL –	
–Regional	$ 132,813.36
–Headquarters	1,400.79
INDIRECT COST –	
–	323,560.50
EPA TRAVEL –	
–Regional	7,660.98
–Headquarters	2,219.36
ARCS CONTRACT –	
–W.W. Eng. & Scienc (68-W8-0079)	1,152,885.37
CLP CONTRACTS –	
–Financial Cost Summary	266,072.10
ESAT CONTRACT –	
–Lockheed Engineering and Sciences (68-D1-0158)	24,685.76
FIT CONTRACT –	
–Ecology and Environment (68-01-7347)	36.45
IAG CONTRACTS –	
–Agency for Toxic Substances & Disease RGY (ATSDR)	26,787.23
Miscellaneous –	
–Mis	2,308.14
Overflights –	
–EPIC- Bionetics (68-03-3532)	3,992.06
REM CONTRACTS –	
–CH2M Hill (68-01-6692)	8,445.39
SCA – State Cooperative Agreement	
Micchigan DNR (99525801)	254.00
Micchigan DNR (99526001)	4,493.00
Micchigan DNR (99533901)	59,999.00
TAT CONTRACTS –	
–Roy F. Weston (68-01-7367)	25,933.13
TES CONTRACTS –	
–Jacobs Engineering (68-01-7351)	1,707.63
–Planning Research Corporation (68-W9-0006)	766.34
–Metcalf and Eddy (68-W9-0007)	136.89
Total Site Costs	2,046,157.48
COSTS RECOVERED ON SITE	760,796.00

CUMULATIVE COST SUMMARY
ALBION-SHERIDAN TOWNSHIP, MI
SUPERFUND SITE # AN
PREPARED 7/16/97

000003

EPA EXPENDITURES	Cumulative Costs from 10/01/80 Thru 2/28/97
PREJUDGEMENT INTEREST	0.00
TOTAL COST	1,285,361.48

NOTE: This summary does not include Department of Justice costs. Those costs will be documented separately by the Department of Justice.

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IN THE UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF MICHIGAN

UNITED STATES OF AMERICA, Plaintiff, vs. CITY OF ALBION, MICHIGAN, Defendant/Third-Party Plaintiff, vs. COOPER INDUSTRIES, INC., and CORNING INCORPORATED, Third-Party Defendants, Counterclaimants and Third-Party Plaintiffs.	***C O P Y*** Case No. 1:97-CV-1037 Hon. David W. McKeague

DEPOSITION OF BERNARD L. KONKLE

Jackson, Michigan

Thursday, May 7, 1998

Reported by: Ann M. Pendery, CSR No. 3093

A You mean the chemistry?

Q Yes.

A Well, the carbon range could not be-- had to be point-- between 08 and .13. The manganese had to be .30 to .90. The phos. had to be maximum of 40, .40.

Q I'm sorry the phos.?

A Phos., phosphorus.

Q Phosphorus?

A And the sulfur had a maximum of .04.

Q Okay.

A Those are the four elements that these steel companies produce on all of their chemistry.

Q Okay. Mr. Konkle, are you familiar with the term "hazardous substance"?

A Yes.

Q Are you familiar with the statutory definition of hazardous substance under the Comprehensive Environmental Compensation and Liability Act?

A No.

Q Okay. If I can ask you to refer, again, to Exhibit Number 4, Mr. Konkle, your testimony earlier, I believe, was that you couldn't recall the suppliers of the cutting oils that were used by Decker in that time period.

it composed of oil materials from the machines?

MR. CALDWELL: Objection as to foundation.

THE WITNESS: It would have been-- the sediment portion would be like the material as we get it from the manufacturer. The steel has a lime coating on it for the purpose of stopping any corrosion prior to use. The ingredient of the sediment would have the lime in it, from when it passes through the heading operation. It would also have-- we have a drawing block that we use to size wire, and that wire runs through a die that is lubricated with soap. That soap gets impregnated into the steel. That also ends up in your catch basin of the equipment. You would have any carbon wear from the dies-- to manufacture the part, the die doesn't last forever. The steel is being pushed into the die. You eventually wear that die out. You would have whatever wear comes off of the steel, and just dirt.

Q And also have shavings from the tapping operation which would also be accumulated into that sludge as well; is that correct?

A Well, the shavings would be filtered out of it.

Q Okay.

A And we try to filter out everything we can

so we can reuse the oil. So that would be filtered out, or it would have been in the sediment that was put in the gondola.

Q So some of the shavings would have found their way into the--

A Yes. I'm sure. To answer your question, I'm sure there were probably shavings in there.

Q In addition to the other materials that were--

A Correct.

Q Is it also the case that some of the oil that would be used in the tapping operation would be found in this mud, as well, in small volumes?

A I'm sure that there would be something there.

Q Can you estimate, based on your experience, the percent volume of oil that would find its way into the mud?

MR. CALDWELL: Objection as to foundation.

THE WITNESS: I wouldn't have any way of knowing.

MR. BIROS: I guess I don't have anymore questions.

MR. DAVIS: I don't have any questions at this time.